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FEDERAL COMMUNICATIONS COMMISSION

Dennis R. Patrick, Chairman

James H. Quello

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-15

In the Matter of

Amendment of the Commission's Rules to Allow the Selection from Among Competing Applicants for New AM, FM, and Television Stations By Random Selection (Lottery)

ORDER

Adopted: April 27, 1989; Released: April 27, 1989

By the Chief, Mass Media Bureau:

1. On January 30, 1989, a *Notice of Proposed Rule Making* [1] ("*Notice* ") was adopted in the above-captioned proceeding, inviting comment on whether use of random selection procedures ("lotteries") to select among competing applicants for new AM, FM, and television stations would, on balance, better serve the public interest than the comparative hearing process presently utilized. The deadlines for filing comments and reply comments in this proceeding are currently May 8, 1989, and June 22, 1989, respectively.

2. On April 21, 1989, a motion for extension of time for filing comments was submitted by the Federal Communications Bar Association ("FCBA"). The motion requests that the deadline for filing comments be extended by 60 days. FCBA contends that the additional time is needed to review the Commission's recently-released *Report and Order* in Gen. Docket No. 88-328, amending the construction permit application form (FCC Form 301) and the yet-to-be released *Report and Order* in BC Docket No. 81-742, adopted March 30, 1989, modifying procedures to prevent abuse of the comparative renewal process. FCBA asserts that reforms undertaken in both of these proceedings to discourage sham filings are indispensable to a finalization of the FCBA's position with respect to additional reforms to the comparative hearing process. In addition, it believes that the requested extension of time is necessary to allow for consultation between numerous committees and members of the Bar so that, to the maximum extent possible, FCBA may speak with one voice. Finally, FCBA suggests that the additional time may relieve uncertainty that currently exists regarding whether individual law firms and attorneys may file their own comments consistent with the District of Columbia Code of Professional Responsibility.

3. Although Section 1.46 of the Commission's Rules provides that extentions of time shall not be routinely granted, we believe that FCBA has presented convincing arguments why some additional time may be warranted, albeit less than the requested 60 days. In this regard, we note that our *Report and Order* in Gen. Docket No. 88-328, amending the construction permit application form (FCC Form 301), referenced by FCBA in support of its extension request, has now been released and thus, is now available to the public.[2] Nevertheless, some additional time would facilitate commenters in reviewing our recent changes to the construction permit application form which, like our lottery proposal, affects the comparative new licensing process and would assist FCBA in its efforts to submit meaningful comment herein. In view of the foregoing, and because we already have provided approximately two months for the filing of initial comments, we will grant a limited extension of time that allows for the filing of initial comments by June 8, 1989, and reply comments by June 30, 1989.

4. Accordingly, IT IS ORDERED, That the Motion for Extension of Time To File Comments filed by the Federal Communications Bar Association IS GRANTED to the extent provided in paragraph 3 herein.

5. IT IS THEREFORE ORDERED, That the time for the filing of comments and reply comments in MM Docket No. 89-15 IS HEREBY EXTENDED to June 8, 1989, and June 30, 1989, respectively.[3]

6. This action is taken pursuant to authority found in Sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, and Sections 0.204(b), 0.283, and 1.45-46 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Alex D. Felker
Chief, Mass Media Bureau

FOOTNOTES

[1] FCC 89-28, released March 10, 1989, and *summarized* at 54 Fed. Reg. 11416 (March 20, 1989).

[2] Although we expect the text of *Report and Order* in BC Docket No. 81-742 to be released shortly, we do not believe that our action in that proceeding is so inextricably tied to our instant proposal as to justify further delay pending the release of that text.

[3] We note that on March 31, 1989, American Women in Radio and Television, Inc. ("AWRT") filed a "Petition for Immediate Termination of [this] Proceeding" based on the assertion that the proceeding directly contravenes the appropriations legislation for the Commission for fiscal year 1989. In the *Notice*, the Commission made an initial determination that it has the authority to proceed in this area. *See Notice*, *supra* at para. 40 n.62. However, because we invited comment on our interpretation of the appropriations legislation, we shall treat AWRT's petition as comments filed in this proceeding and do likewise with respect to related pleadings filed by FCBA and the National Association of Broadcasters.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-136

In the Matter of

AMERITECH OPERATING COMPANIES — Transmittal No. 287
Revisions to Tariff F.C.C. No. 2

MEMORANDUM OPINION AND ORDER

Adopted: April 27, 1989; Released: April 28, 1989

By the Chief, Common Carrier Bureau:

1. On March 17, 1989, the Ameritech Operating Companies (Ameritech) filed the captioned tariff revisions which propose averaged rates for 44.736 Mbps (DS3) channel mileage and DS3 to DS1 multiplexing. Ameritech would continue to provide DS3 Local Distribution Channels (LDCs) on an individual case basis. The proposed revisions are scheduled to become effective May 1, 1989.[1]

2. MCI Telecommunications Corporation (MCI), Teleport Communications Group (TCG), Metropolitan Fiber Systems, Inc. (MFS), Indiana Digital Access (IDA), and Diginet, Inc. (Diginet) have filed petitions to reject or suspend and investigate the captioned transmittal. Petitioners generally argue that we should make the proposed DS3 rate structure subject to the pending investigation of LEC ICB DS3 rates.[2] They note that we included similar generalized rate structures for DS3 service proposed by five of the Bell Operating Companies (BOCs) in the investigation in CC Docket No. 88-136.[3] MFS also argues that Ameritech's proposed DS3 rates are not adequately cost justified.[4]

3. Ameritech argues in response that its proposed generalized rates for DS3 channel mileage and multiplexing are fully consistent with the requirements of the Communications Act.[5] In addition, Ameritech asserts that its proposed ICB rates for DS3 LDCs are justified on the basis of cost differences and competitive necessity.[6]

4. As we noted in the *1989 Access Tariff Order*, the continued use of ICB rates is the most obviously troubling aspect of the BOCs' newly-filed generalized DS3 tariffs.[7] Ameritech, like the BOCs who filed DS3 tariffs in the annual access tariff filing, proposes to "grandfather" existing ICB DS3 services so that these existing ICB services would not be affected by the establishment of a general offering. In addition, like other BOCs, Ameritech proposes to retain ICB pricing for DS3 service on a going-forward basis. Although Ameritech's proposed DS3 tariff represents a step forward, it does not resolve the concerns that prompted us to institute the investigation in Docket 88-136 and may present other questions that warrant investigation. We therefore include Ameritech's proposed DS3 tariff in the investigation in Docket 88-136. As we stated in the *1989 Access Tariff Order*, we expect to release an Order designating additional issues for investigation and establishing a pleading cycle in the near future.[8]

5. Accordingly, IT IS ORDERED that the Ameritech Operating Companies, Tariff F.C.C. No. 2, Transmittal No. 287, is subject to the investigation instituted in CC Docket No. 88-136.

6. IT IS FURTHER ORDERED that the petitions to reject or suspend and investigate filed by MCI Telecommunications Corporation, Teleport Communications Group, Metropolitan Fiber Systems, Inc., Indiana Digital Access, and Diginet, Inc. ARE GRANTED to the extent indicated above and otherwise ARE DENIED.

7. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the subject tariff revisions ARE SUSPENDED for one day.

8. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act, 47 U.S.C. §§ 154(i), 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the Ameritech Operating Companies shall keep accurate account of all amounts received pursuant to Individual Case Basis rates for the services which are the subject of this investigation.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Originally, Ameritech also proposed to introduce an area-specific rate structure for DS1 service in the state of Wisconsin and a three-step DS1 Local Distribution Channel rate structure in the states of Illinois, Michigan, and Wisconsin. Ameritech Tr. No. 287, Letter of Transmittal at 1. Ameritech subsequently deferred the proposed revisions to the DS1 rate structure. Ameritech Tr. No. 299, filed April 26, 1989.

[2] Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, CC Docket No. 88-136, Order Designating Issues for Investigation, 3 FCC Rcd 2582 (1988) (*Designation Order*). *See also* Supplemental Order Designating Issues for Investigation, CC Docket No. 88-136, 3 FCC Rcd 6066 (1988); Public Notice, Network Communications, Inc., Files Comments on Individual Case Basis Rates for DS3 Services, CC Docket No. 88-136, 4 FCC Rcd 846 (1989). The Bureau is also investigating certain generalized DS3 rate structures which took effect on April 1, 1989. *See* Annual 1989 Access Tariff Filings, Memorandum Opinion and Order, DA 89-337, released Mar. 22, 1989, (*1989 Access Tariff Order*), *recon. & app. for review pending*, at paras. 537-539.

[3] *See, e.g.*, MFS Petition at 15-17 *(citing 1989 Access Tariff Order* at paras. 537-39).

[4] *Id.*

[5] Ameritech Opposition To Petitions to Reject or Suspend and Investigate at 13-17.

[6] *Id.* at 17-18.

[7] *1989 Access Tariff Order* at para. 538.

[8] *Id.* at para. 537.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERITECH OPERATING COMPANIES — Transmittal No. 286
Revisions to Tariff F.C.C. No. 2

ORDER

Adopted: April 27, 1989; Released: April 28, 1989

By the Chief, Common Carrier Bureau:

1. On April 19, 1989, Ameritech Operating Companies (Ameritech) filed Transmittal No. 286 providing for high capacity service for ITT Communications Services, Inc., in the State of Michigan.[1] The proposed revisions are scheduled to become effective April 30, 1989.

2. On March 28, 1988, the Bureau released an Order initiating an investigation of a number of local exchange carriers' (LEC) proposed Individual Case Basis (ICB) rates, designating for investigation issues concerning the LECs' continued use of ICB rates for DS3 offerings.[2] The ICB rates proposed in Ameritech's Transmittal 286 raise the same issues as those transmittals subject to our *Designation Order*. Therefore, the instant transmittal will be subject to the outcome of that investigation. In view of the fact that Ameritech has made the proposed ICB rates consistent with its pending generalized filing, we will also allow Ameritech to advance the effective date of its proposed revisions on not less than one day's notice.

3. Accordingly, IT IS ORDERED that Ameritech Operating Companies, Tariff F.C.C. No. 2, Transmittal 286 is subject to the investigation instituted in CC Docket No. 88-136.

4. IT IS FURTHER ORDERED that Ameritech Operating Companies may file tariff revisions to advance the effective date of the above-referenced transmittal, on not less than one day's notice. For these purposes, we waive Sections 61.56, 61.58, and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, 61.59, and assign Special Permission No. 89-316.

5. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, Ameritech's tariff revisions are suspended for one day.

6. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act, 47 U.S.C. §§ 154(i), 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, Ameritech Operating Companies shall keep accurate account of all amounts received pursuant to rates for DS3 services filed under its proposed revisions.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Ameritech Operating Companies, Transmittal No. 286, filed Mar. 16, 1989.

[2] Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, CC Docket No. 88-136, Order Designating Issues for Investigation, 3 FCC Rcd 2582 (1988) (*Designation Order*). *See also* Supplemental Order Designating Issues for Investigation, CC Docket No. 88-136, 3 FCC Rcd 6066 (1988); Public Notice, Network Communications, Inc., Files Comments on Individual Case Basis Rates for DS3 Services, CC Docket No. 88-136, 4 FCC Rcd 846 (1989). The Bureau is also investigating certain generalized DS3 rate structures which took effect on April 1, 1989. *See* Annual 1989 Access Tariff Filings, Memorandum Opinion and Order, DA 89-337, released Mar. 22, 1989, *recon. & app. for review pending*, at paras. 537-539.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

IOWA NETWORK ACCESS DIVISION Tariff F.C.C. No. 1 — Transmittal Nos. 1, 6, and 10

ORDER

Adopted: April 27, 1989; Released: April 28, 1989

By the Chief, Common Carrier Bureau:

1. Iowa Network Services (INS), which is jointly owned by 135 independent telephone companies, or routing exchange carriers (RECs), includes the Iowa Network Access Division (INAD) and the Iowa Network Interexchange Carrier Division (INICD). On August 10, 1988, INAD filed Transmittal No. 1, which proposes a new tariff, its Tariff F.C.C. No. 1, to provide equal access to the exchanges of the RECs. The tariff proposes that INAD will provide access service, while INICD will operate as a non-dominant interexchange carrier (IC). INICD is developing a fiber optic network and plans to deploy an access tandem in Des Moines, Iowa, with the capability to provide Centralized Equal Access Service (CEAS) utilizing LATA Equal Access System (LEAS)-type technology.

2. INAD proposes to lease capacity on the network from INICD and thereby offer equal access capability via CEAS to all ICs requesting access to the REC exchanges. The INAD tariff permits ICs to purchase CEAS via interconnection at either the central access tandem in Des Moines or one of 15 toll center locations without incurring additional charges. On February 29, 1988, the Common Carrier Bureau (Bureau) granted INAD certification pursuant to Section 214 of the Communications Act, 47 U.S.C. § 214, to lease capacity on INICD's network.[1]

3. On August 25, 1988, American Telephone and Telegraph Company (AT&T) and MCI Telecommunications Corporation (MCI) filed petitions to suspend and investigate the tariff. Also on August 25, Northwestern Bell Telephone Company (NWB) filed a petition to reject, and Teleconnect Company filed a petition to reject or suspend the transmittal. INAD submitted its opposition to these petitions on September 6, 1988. On February 13, 1989, INAD filed Transmittal No. 6 to revise certain of its tariff provisions. On April 14, 1989, INAD filed Transmittal No. 10, proposing further revisions. The tariff is scheduled to take effect on May 1, 1989.[2]

4. AT&T observes that the *Order and Certificate* required INAD to submit, among other things, data regarding post-dial delay and the plan's effect on international and operator services, and asserts that INAD has not done so. AT&T Petition at 3. AT&T also contends that INAD has based its proposed rates on inadequate cost support and that it offers no cost information regarding alternative arrangements through which its service may be provided. *Id.* at 4.

5. MCI maintains that the INAD plan discriminates against ICs other than AT&T because they will incur additional expenses to send their traffic from the tandem or toll centers to their points of presence (POPs). MCI Petition at 4-5. MCI further submits that CEAS as proposed by INAD does not constitute equal access because AT&T will continue to receive Feature Group C (FGC) and because some of the REC end offices are unable to provide a 10XXX access code. *Id.* at 5-6. Moreover, MCI observes, the rates included in the INAD plan are non-distance-sensitive but INAD will be paying INICD a distance-sensitive monthly lease rate. MCI also questions whether INAD and INICD are separate entities. *Id.* at 8-9.

6. NWB contends that the INAD proposal would discourage carriers from serving rural Iowa because it would significantly increase the costs of operating there. NWB Petition at 7. NWB further observes that while INAD will lease only some of the available capacity in its network, it will pay INICD all the costs to construct and maintain the network, including a rate of return of over 30 percent. *Id.* at 8-9. NWB also argues that the tariff mistakenly assumes that NWB will remain the intraLATA carrier for INS member exchanges, and maintains that equal access could be provided to rural Iowa via alternative equal access technologies. *Id.* at 9, 10 n.22.

7. Teleconnect argues that INAD's non-distance-sensitive rate structure does not reflect the manner in which costs are incurred, and that the proposal is not properly based upon fully distributed costs. Teleconnect Petition at 7. Teleconnect also questions whether INAD violates Section 69.3(e)(3) of the Commission's Rules, 47 C.F.R. § 69.3(e)(3), since under INAD's proposal to provide the common transport carrier's carrier charge, the RECs that concur in NECA's tariff are concurring in less than all of the carrier's carrier access charge elements. *Id.* at 8 n.23. Teleconnect observes that INAD will provide only the common transport element of access and argues that this violates Section 69.4(b) of the Commission's Rules, 47 C.F.R. § 69.4(b). *Id.* at 9.

8. INAD replies that its primary costs will consist of lease payments for transmission and switching facilities and for general administrative expenses, and that it will not pay all of INICD's costs or lease all the capacity on INICD's network. INAD Opposition at 9-10. INAD further notes that its proposal is cost justified and that its cost support has identified its direct and common costs, which are all assigned to the common transport element. *Id.* at 12-13.

9. On February 13, INAD filed Transmittal No. 6 to clarify certain terms and conditions of its tariff in response to concerns raised by petitioners and by Bureau staff. The transmittal modified, among other things, procedures for payment of bills, the calculation of interest on late payment charges, and the manner in which local transport is measured. The transmittal also clarified that billing disputes will be resolved in favor of the customer and deleted a provision regarding design blocking objectives which had been questioned by AT&T. On April 14, INAD filed Transmittal No. 10, which revised its cost data to better conform with Commission Rules, and lowered INAD's proposed local transport rate from 1.61 cents per minute to 1.17 cents per minute.

10. The Bureau has reviewed the tariff transmittals, the Description and Justification supporting them, and the pleadings. We find that no compelling argument has been

presented that the tariff filed by INAD is patently unlawful so as to require rejection or that the tariff warrants investigation at this time.

11. IT IS THEREFORE ORDERED that the petitions filed against Iowa Network Access Division Tariff F.C.C. No. 1, Transmittal No. 1, by American Telephone and Telegraph Company, MCI Telecommunications Corporation, Northwestern Bell Telephone Company, and Teleconnect Company ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Application of Iowa Network Access Division for Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission's Rules and Regulations To Lease Transmission Facilities To Provide Access Service to Interexchange Carriers in the State of Iowa, 3 FCC Rcd 1468 (1988) (*Order and Certificate*).

[2] On August 10, 1988, INAD filed with the Commission a petition for waiver of various Commission rules and policies, which elicited responsive pleadings. *See* AT&T Comments, filed Aug. 22, 1988; Teleconnect Opposition, filed Aug. 22, 1988. INAD withdrew its petition on January 19, 1989.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

NATIONAL EXCHANGE CARRIER ASSOCIATION

Petition for Waiver of
Equal Access Balloting
Requirements

ORDER

Adopted: April 27, 1989; Released: April 28, 1989

By the Chief, Common Carrier Bureau:

1. On April 19, 1989, the National Exchange Carrier Association (NECA) filed a petition for waiver of certain equal access balloting and allocation requirements outlined in the Commission's *Allocation Order*.[1] NECA filed the petition on behalf of 128 local exchange carriers (LECs) that plan to provide centralized equal access service as part of a network proposed by Iowa Network Services (INS). That network would provide equal access service to rural exchanges in Iowa via existing toll centers and a central access tandem in Des Moines.[2] No pleadings have been filed in response to NECA's petition.[3]

2. NECA first requests a waiver of the requirements regarding end user notification of the availability of equal access at a particular end office. NECA observes that the *Allocation Order* requires LECs to mail initial interexchange carrier (IC) selection ballots to customers 90 days prior to conversion of an end office to equal access, and to mail second ballots 50 days prior to conversion. NECA further notes that the *Allocation Order* permits LECs to "cluster" end office conversions and consolidate mailing dates according to the first equal access conversion in the cluster. NECA Petition at 1-3 (citing *Allocation Order*, 101 FCC 2d at 928).

3. NECA asserts that the procedures established in the *Allocation Order* were developed for the situation in which a single company converts its end offices to equal access. In contrast, NECA contends, the INS network involves the conversion of 275 end offices owned by 128 telephone companies. NECA further notes that the availability of equal access at a particular end office in the INS network depends on the timing of facility rearrangements being implemented in cooperation with other companies. Accordingly, NECA submits, conversions will be effected by toll center and spread over a range of dates. For example, end offices subtending the Iowa Network Access Division's (INAD) central access tandem in Des Moines will be converted between May 1 and May 23, 1989. *Id.* at 3-4.

4. NECA observes that equal access ballots were mailed to INS customers on January 31, 1989, 90 days prior to the initial conversion date of May 1. NECA also notes that second ballots were mailed between March 27 and March 31, 1989. Therefore, NECA asserts, conversions effected on May 1 will conform to the *Allocation Order* while subsequent conversions will not. To alleviate potential confusion, NECA requests that the INS companies be granted a partial waiver of the *Allocation Order* to provide a third notification. NECA notes that the INS companies have agreed to provide such notification to customers served by end offices that will be converted more than 30 days after the initial implementation of the INS network. *Id.* at 4-5.

5. In addition, NECA requests a waiver of the *Allocation Order* to extend from six to twelve months the period during which customers may make a one-time change in their selected or assigned IC without incurring change charges.[4] NECA notes that the INS companies have agreed to the proposed extension. *Id.* at 5.

6. We believe that granting NECA's waiver request is in the public interest. The INS companies' issuance of a third notification will greatly benefit consumers. Similarly, extension of the period for charge-free presubscription changes is an appropriate measure in light of the complexities associated with implementing the INS network.

7. Accordingly, IT IS ORDERED that the petition for waiver filed by the National Exchange Carrier Association IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 FCC 2d 911, *modified on recon.*, 102 FCC 2d 503 (1985) (*Allocation Order*).

[2] *See* Iowa Network Access Division, Tariff F.C.C. No. 1, Transmittal No. 1, filed Aug. 10, 1988.

[3] On April 21, 1989, NECA filed Transmittal No. 358, which makes revisions to NECA Tariff F.C.C. No. 5 to implement the waivers requested in its petition. Transmittal 358 is scheduled to take effect May 1, 1989.

[4] *See Allocation Order*, 101 FCC 2d at 928.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TELECOMMUNICATIONS RESEARCH AND ACTION CENTER AND CONSUMER ACTION,
Complainant,

v. File No. E-88-106

NATIONAL TELEPHONE SERVICES, INC.
Defendant.

MEMORANDUM OPINION AND ORDER

Adopted: April 27, 1989; Released: April 28, 1989

By the Acting Chief, Enforcement Division, Common Carrier Bureau:

1. On April 24, 1989, National Telephone Services, Inc. (NTS) filed a Petition for Temporary, Partial Waiver of the call blocking provisions of the Bureau's Memorandum Opinion and Order in *Telecommunications Research and Action Center v. International Telecharge, Inc., et. al.*, DA 89-237 (released February 27, 1989) (*Order*). [1] In addition, NTS filed simultaneously with its petition, a motion for deferral of the effectiveness of that portion of the *Order* requiring it to amend its contracts with so-called call aggregators to prohibit 10xxx call blocking pending final Bureau action on the waiver petitions.

2. In support of its motion for deferral, NTS contends that it would be unnecessarily costly and burdensome to require call aggregators "to replace existing equipment or to attempt to gerry-rig solutions to the problem as a result of contractual amendments, only to have the Bureau subsequently grant a waiver of the call blocking requirement."[2]

3. After careful consideration of the information submitted in this matter, we deny NTS's motion. Our decision to require NTS and the other defendant operator service providers[3] to eliminate immediately the practice of call blocking was based on our finding that the practice was unreasonable and that call blocking effectively precludes consumers from reaching their long distance carriers of choice and operates to distort and impede the operation of a fully competitive operator services industry.[4] We are not persuaded that the arguments raised by NTS warrant deferral of our call blocking prohibition. We believe that the public interest would be best served by maintaining the specific requirement that NTS and the other named defendants amend their contracts with call aggregators to prohibit the unlawful practice to the fullest extent possible pending resolution of the more general waiver proceeding. To the extent NTS and other operator service providers can show that factors or circumstances render it impossible to comply with this requirement in specific instances, we are prepared to consider these matters on a case-by-case basis and grant waivers where appropriate.

4. Accordingly, IT IS ORDERED, pursuant to authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the Motion for Deferral, filed April 24, 1989 by National Telephone Services, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Howard M. Wilchins
Acting Chief, Enforcement Division
Common Carrier Bureau

FOOTNOTES

[1] Also on April 24, 1989, a second petition for limited waiver of the call blocking prohibition was filed by International Telecharge, Inc. The arguments and requests for relief contained in the petitions are identical in their essentials and, therefore, have been consolidated for disposition. *See* File No. ENF-89-08. In addition, the Bureau issued a Public Notice on April 27, 1989 inviting public comments on the waiver requests. *See Public Notice*, DA 89-480 (released April 27, 1989).

[2] Motion for Deferral at 2.

[3] The remaining four defendants include: Central Corporation, International Telecharge, Inc., Payline Systems, Inc. and Telesphere Network, Inc.

[4] *See Order* at 11.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-104

In the Matter of

Amendment of Section 73.202(b), RM-6645
Table of Allotments,
FM Broadcast Stations.
(Big Pine, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 24, 1989; Released: May 8, 1989

By the Chief, Allocations Branch:

1. A petition for rule making has been filed on behalf of Janice D. Levin (petitioner) seeking the allotment of FM Channel 227B to Big Pine, California, as that community's first local broadcast service. Petitioner stated her intention to apply for the channel if allotted.

2. A staff engineering analysis has determined that Channel 227B can be allotted to Big Pine, California, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.[1]

3. In view of the fact that Big Pine could receive a first local broadcast service, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Big Pine, California	–	227B

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **June 29, 1989,** and reply comments on or before **July 14, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Tom W. Davidson, Esq.
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202(b), 73. 504 and 73. 606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] Coordinates used for Channel 227B at Big Pine, California, are 37-09-54 and 118-17-12.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-105

In the Matter of

Amendment of Section 73.606(b), RM-6643
Table of Allotments,
Television Broadcast Stations.
(Coos Bay, Oregon)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 27, 1989; Released: May 8, 1989

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by California Oregon Broadcasting, Inc. (petitioner), requesting the allotment of Channel 41 to Coos Bay, Oregon, as the community's second local television service. Petitioner states that it will apply for the channel, if allotted, and operate the station as a satellite of Station KOBI-TV, Medford, Oregon, of which it is the licensee.

2. On July 16, 1987, the Commission instituted a temporary freeze on the filing of petitions for rule making to amend the TV Table of Allotments for certain metropolitan areas, including those communities located within the minimum co-channel separation distance. *See, Order, Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, 52 Fed. Reg. 28346, published July 29, 1987. Our review of petitioner's proposal shows that Channel 41 can be allotted to Coos Bay in compliance with the Commission's minimum distance separation requirements. However, Coos Bay is one of the communities affected by the freeze *Order* since it is located within 175 miles (the co-channel minimum distance separation) of Portland, Oregon. Recognizing this fact, petitioner states that it has identified a site area 13 kilometers south of Coos Bay which will permit compliance with the Commission's minimum distance separation requirements and the freeze *Order*. It goes on to state that Channel 23 was recently allotted to Coos Bay on the same basis in MM Docket 88-42, 3 FCC Rcd 5242 (1988).

3. We believe the public interest would be served by proposing the allotment of Channel 41 to Coos Bay, as the community's second local television service. Our review confirms that Channel 41 can be proposed for allotment to Coos Bay in compliance with the terms of the freeze *Order* if the transmitter site is restricted to an area at least 12.2 kilometers (7.6 miles) south of the community.[1] Accordingly, we seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Coos Bay, Oregon	23+	23+, 41

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **June 29, 1989,** and reply comments on or before **July 14, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Marnie K. Sarver, Esq.
Pierson, Ball & Dowd
1200-18th Street, N.W.
Washington, D.C. 20036
(Counsel to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. *See, Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch

Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Allotments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 43-16-00 and West Longitude 124-16-35.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-106

In the Matter of

Amendment of Section 73.202(b), RM-6568
Table of Allotments,
FM Broadcast Stations.
(Weston, West Virginia)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 27, 1989; Released: May 8, 1989

By the Chief, Allocations Branch:

1. At the request of Stonewall Broadcasting Corporation (petitioner), licensee of Station WSSN(FM), Channel 272A, Weston, West Virginia, the Commission considers herein a petition for rule making seeking the substitution of Channel 272B1 for Channel 272A and modification of its license to specify operation on the higher class channel. Petitioner states its intention to apply for the upgraded facilities, if granted.

2. The substitution can be made consistent with the Commission's minimum distance separation requirements from the site specified by the petitioner, which is 12.3 kilometers (7.6 miles) east of Weston.[1]

3. Since the proposal is located within the protected areas of the National Radio Astronomy Observatory "Quiet Zone" at Green Bank, West Virginia, petitioner will be required to comply with the notification requirement of Section 73.1030(a) of the Commission's Rules.

4. As requested, we shall propose to modify the license of Station WSSN(FM) at Weston, West Virginia, to specify operation on Channel 272B1 in lieu of Channel 272A. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel at Weston.

5. Accordingly, in order to provide Weston with its first wide coverage area FM service, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Weston, West Virginia	272A	272B1

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **June 29, 1989,** and reply comments on or before **July 14, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

W. T. Weber, Jr., Esquire Attorney at Law 208 Main Avenue Weston, West Virginia 26452 (Counsel for petitioner)	Stonewall Broadcasting Corporation 300 Harrison Avenue P. O. Box 980 Weston, West Virginia 26452 (Petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202(b), 73. 504 and 73. 606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The restricted site coordinates are 39-00-00 and 80-20-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-107

In the Matter of

Amendment of Section 73.202(b), RM-6617
Table of Allotments,
FM Broadcast Stations.
(Coalmont, Tennessee)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 27, 1989; Released: May 8, 1989

By the Chief, Allocations Branch:

1. At the request of Cumberland Communication Corporation (petitioner), the Commission has before it for consideration a petition for rule making seeking the allotment of Channel 284A to Coalmont, Tennessee, as that community's first local FM service. Petitioner states an intention to apply for the channel, if allotted.

2. Channel 284A can be allotted to Coalmont in compliance with the Commission's minimum distance separation requirements with a site restriction.[1] A site restriction of 6.0 kilometers (3.7 miles) west of the community is required in order to avoid a short spacing to Station WTCX(FM), Channel 285A, Dayton, Tennessee.

3. In view of the fact that Coalmont, Tennessee, could receive its first local FM channel, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Coalmont, Tennessee	—	284A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **June 29, 1989,** and reply comments on or before **July 14, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Ashton R. Hardy, Esquire
Bradford D. Carey, Esquire
Marjorie R. Esman, Esquire
Walker, Bordelon, Hamlin,
Theriot and Hardy
701 South Peters Street
New Orleans, LA 70130
(Counsels for petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates are 35-20-22 and 85-46-10.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-125,
Phase II

In the Matter of

Annual 1985
Access Tariff Filings

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: April 26, 1989; Released: April 27, 1989

By the Commission:

I. INTRODUCTION

1. On March 9, 1987, we released an Order completing the investigation of the local exchange carriers' (LECs) revised terms and conditions contained in their July 2, 1985, annual interstate access tariff filings.[1] On April 8, 1987, MCI Telecommunications Corporation (MCI) filed a petition for clarification or, in the alternative, reconsideration of the *Terms and Conditions Order*.[2] On April 9, 1987, the GTE Service Corporation (GTE) filed a petition for partial reconsideration. On June 5, 1987, New York Telephone Company and New England Telephone and Telegraph Company (NYNEX) filed a petition for reconsideration. For the reasons discussed below, we deny these petitions.

II. BACKGROUND

2. On July 2, 1985, the LECs filed revised annual interstate access tariffs as directed by this Commission's access charge rules. *See* 47 C.F.R. Part 69. These filings, including 85 tariffs and over 100,000 pages of support documentation, were the first general updates of the access tariffs which became effective for switched access on May 25, 1984, and for special access on April 1, 1985. In these revisions, the LECs proposed changes to virtually all their rates, terms, and conditions for both switched and special access.

3. In an Order released September 30, 1985, the Common Carrier Bureau (Bureau) initiated an investigation into these tariff revisions.[3] While allowing the bulk of the proposed rate revisions to become effective on October 1, 1985, the Bureau suspended some proposed rates for the five-month statutory period pending investigation, including the LECs' minimum monthly usage charges (MMUCs), rejected certain of the terms and conditions proposed in the tariffs, and referred consideration of various issues either to a newly established proceeding or to other related ongoing investigations. The Bureau made clear, however, that its action did not constitute either an approval of the revisions which became effective or a resolution of the arguments presented in the opposing petitions. It also made clear that all the proposed rates, terms, and conditions remained subject to investigation, and that it would adopt an Order designating for investigation the specific rates, terms, and conditions that warranted further review.

4. The Bureau later decided that the issues raised by the July 2 filings could be most effectively analyzed if the rate issues were investigated separately from the non-rate terms and conditions. It therefore released an Order on April 14, 1986, designating for investigation the reasonableness of the switched access rates.[4] On June 6, 1986, the Bureau released an Order designating issues and requesting further justification or information with respect to particular switched access tariff non-rate terms and conditions.[5]

5. In the terms and conditions phase of this investigation, this Commission was faced, *inter alia*, with the question of how much and what kind of information the LECs should provide to interexchange carriers (ICs) to permit the ICs to verify their access bills. This Commission concluded in the *Terms and Conditions Order* that the Ordering and Billing Forum (OBF) of the Exchange Carriers Standards Association, Inc. (ECSA) would be an appropriate forum for resolving issues regarding the types of information that should be placed in monthly bills to ICs. Because this Commission was informed by the commenters that resolutions adopted by the OBF are proposals for voluntary implementation and are not binding on participating carriers, we encouraged LECs and ICs to decide cooperatively what information should be provided on monthly statements.[6] We left the ICs free to pursue other remedies, such as filing complaints under Section 208 of the Communications Act, 47 U.S.C. § 208, but said we would give considerable weight to OBF decisions.[7]

6. We also evaluated the reasonableness of the LECs' MMUCs and presubscription change charges. We concluded that the MMUCs should be applied based upon the threshold number of minutes contained in the tariffs effective as of July 2, 1985.[8] We further ordered that, due to the carriers' failure to file adequate cost support, MMUCs should apply only to local transport charges and should be calculated based only on the cost of dedicated transport.[9] This Commission also decided that the carriers had failed to provide the necessary detailed cost justification for proposed increases in presubscription change charges, and required all carriers, except for Rochester Telephone Company, to continue to apply a fixed rate of $5.00 per presubscription change.[10] We also required that LECs waive all charges to reassign an end user to an IC when that end user was incorrectly assigned, regardless of whether that assignment occurred due to the ordinary or gross negligence of the telephone company.[11] This Commission ordered the LECs to refund any MMUC overcharges as well as any presubscription change charges that had been improperly applied as a result of the company's misassignment.[12]

7. The original date for refunds was July 7, 1987. On June 26, 1987, the Bell Atlantic Telephone Companies (Bell Atlantic) filed a request for stay of the MMUC refund requirement. In view of these pleadings, the Bureau granted all LECs an extension of time until March 31, 1988, to make refunds of unlawful MMUCs and presubscription change charges in compliance with the

Terms and Conditions Order.[13] The refund deadline has since been extended several times, the most recent deadline being June 30, 1989.[14]

III. ROLE OF OBF IN BILLING INFORMATION DISPUTES

A. *Pleadings*

8. MCI argues that the *Terms and Conditions Order* suggests that if a LEC cooperates with the OBF and complies with OBF standards, then ICs would not obtain any relief as a result of any complaint made against the LEC with respect to its billing practices. MCI Petition at 2. MCI asks this Commission to clarify that LEC compliance with OBF decisions does not constitute *prima facie* evidence that LECs have complied with the Communications Act. *Id.* at 1-2. By relying on the decisions of the OBF in this manner, MCI continues, this Commission would effectively delegate to a segment of private industry the power to regulate industry affairs. MCI argues that this delegation is unreasonable under the Communications Act. Moreover, MCI argues that the OBF is not an administrative agency, and cannot provide due process. *Id.* at 3. MCI contends that LECs manage the OBF and run most OBF meetings, and that the OBF excludes ICs and other industry participants from management. *Id.* at 3-4. MCI further argues that despite language to the contrary in the *Terms and Conditions Order*, MCI did not support this Commission's use of the OBF as a forum for resolving billing disputes. *Id.*[15] Thus, MCI argues, we should clarify that we did not intend to delegate to the OBF our decision-making authority over the reasonableness of billing practices.

9. ECSA, the parent organization of the OBF, states in comments regarding MCI's petition that membership in the OBF is open to all interested parties. According to ECSA, the mission of the OBF is to provide a forum for LECs and ICs to identify, discuss, and resolve issues involving the ordering, provisioning, and billing of access services. ECSA Comments at 3. ECSA explains that the OBF accomplishes its objectives through the efforts of five major working committees and several subcommittees. A moderator oversees the forum, and each working committee is cochaired by an IC and a LEC representative. *Id.*

10. ECSA further states that when an IC or LEC identifies an issue that involves both ICs and LECs and is national in scope, the IC or LEC prepares an Issue Identification Form, whereby the issue is presented to the appropriate committee. The committee then discusses the issue, and reaches a consensus, which ECSA submits is "possibly less than unanimous agreement but definitely more than a simple majority." *Id.* at 4. The committee then presents its proposed resolution to the full OBF membership for "initial closure." *Id.* Next, the proposal is published in the OBF General Session Minutes, and the "full membership again has the opportunity to consider the issue and accept or reject the resolution." *Id.* at 4-5. Implementation of approved proposals is voluntary, ECSA explains, adding that all OBF members are committed to consider implementation of resolutions agreed upon in good faith. *Id.* at 5.

11. In their oppositions to MCI's petition for reconsideration, Bell Atlantic, Southwestern Bell Telephone Company (SWB), Pacific Bell (Pacific), United States Telephone Association (USTA), and Ameritech Operating Companies (Ameritech) argue that this Commission did not delegate decision-making authority to the OBF, nor did we find that compliance with OBF decisions would immunize LECs from further review. Bell Atlantic Opposition at 2; SWB Opposition at 2; Pacific Opposition at 3; USTA Opposition at 3; Ameritech Opposition at 2. SWB, NYNEX, USTA, and Ameritech observe that this Commission will continue to entertain complaints from parties about the adequacy of billing data. SWB Opposition at 3; NYNEX Opposition at 2; USTA Opposition at 3; Ameritech Opposition at 2. At most, the oppositions claim, this Commission has stated that OBF decisions will be treated as "weighty evidence" or a "rebuttable presumption" that billing information is adequate. SWB Opposition at 2; NYNEX Opposition at 2; Pacific Opposition at 3-4. The overriding intent of this Commission's decision, they argue, was merely to reiterate this Commission's historical position that carriers should work out these problems among themselves. SWB Opposition at 2-4; Ameritech Opposition at 2. NYNEX states that it is not unlawful for this Commission to consider industry standards in making its decisions. NYNEX Opposition at 2. Finally, the parties defend the integrity of OBF and its procedures. SWB Opposition at 4-6; NYNEX Opposition at 2; Pacific Opposition at 4-6; USTA Opposition at 2-3; Ameritech Opposition at 2-5.

B. *Discussion*

12. We find that our conclusion in the *Terms and Conditions Order* that the OBF is a proper forum for resolution of certain billing issues does not constitute an improper delegation of authority, nor would compliance with OBF decisions immunize LECs from further review. In the *Terms and Conditions Order*, we merely stated that the OBF would be an appropriate initial forum for resolving issues regarding what information LECs should provide ICs to permit ICs to verify their billing statements. Because we are generally unfamiliar with the information necessary to permit ICs to verify bills, we concluded that LECs and ICs participating cooperatively in the OBF would be better able to determine the information needed.

13. Notably, we did not require that the LECs incorporate the OBF's decisions into their tariffs, nor did we state that LECs or ICs would be bound by the decisions of the OBF. Instead, we determined that in the resolution of IC complaints regarding LEC billing practices, we would give considerable evidentiary weight to standards established by the OBF in our determination of the type and quantity of billing information LECs are expected to provide. Thus, the *Terms and Conditions Order* does not imply that the decisions of the OBF determine whether LECs' billing practices are reasonable, but concludes that the standards set by the OBF are factors to be considered by this Commission in resolving complaints. As a result, we deny MCI's requests for clarification and reconsideration.

IV. REFUND OF MMUCS AND PRESUBSCRIPTION CHANGE CHARGES

A. *Pleadings*

14. GTE and NYNEX ask this Commission to reconsider the requirement that LECs refund MMUCs and presubscription change charges found unlawful in the

Terms and Conditions Order. They argue that in the absence of an accounting order, the Communications Act confers no authority on this Commission to order refunds. GTE Petition at 1-2; NYNEX Petition at 1-2. GTE argues that under Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), this Commission may suspend rates to investigate their reasonableness and, upon its completion of an investigation, may impose liability for refunds only if it has ordered carriers to keep account of charges imposed with respect to the suspended rates. GTE Petition at 2-3. GTE further observes that this Commission has adopted accounting orders in other proceedings, but GTE and NYNEX note that no accounting was ordered regarding the switched access terms and conditions at issue in this proceeding. *Id.* at 3-4; NYNEX Petition at 2. Therefore, GTE and NYNEX argue, this Commission is not empowered to order refunds. GTE Petition at 4; NYNEX Petition at 2. The BellSouth Telephone Companies (BellSouth) and Ameritech filed comments supporting the arguments of GTE and NYNEX.

15. Furthermore, NYNEX contends, the MMUC refund requirement is inconsistent with the rules adopted by this Commission in CC Docket No. 84-800. NYNEX Petition at 2-3. It explains that between October 1, 1985, and December 31, 1986, neither its access rates nor its total interstate rates exceeded the prescribed rate of return. *Id.* Thus, NYNEX claims, a mandate that it refund MMUC charges "would only exacerbate the under-earning already experienced during this period." *Id.* NYNEX adds that if it had not increased the threshold number of minutes and had instead based its MMUC on the threshold contained in the tariffs effective July 2, 1985, the recurring rate for local transport during this period would have been higher. *Id.* at 3.

16. MCI takes issue with GTE's claim that this Commission is not empowered to require LECs to refund unlawful MMUCs. It observes that in the *Suspension Order*, the Bureau suspended tariff revisions proposing to increase MMUCs and required carriers to keep account of all charges collected puruant to provisions under investigation in CC Docket No. 85-166. Thus, it argues, the carriers were indeed ordered to keep account of the charges collected under the provisions under investigation, and the refund is lawful. MCI Opposition at 3 (citing Annual 1985 Access Tariff Filings, Mimeo No. 7401, released Sept. 30, 1985, at paras. 132, 138).[16]

17. US Sprint Communications Company (Sprint), in its opposition to NYNEX's petition, states that a Section 204(a) accounting order facilitates refunds, but does not constitute a condition precedent to the ordering of refunds. Sprint Opposition at 2-3. Sprint also argues that a refund in this case would not be inconsistent with the Part 65 rules because those rules do not guarantee minimum rates of return. According to Sprint, Part 65 should not be read to allow carriers to retain the proceeds of unlawful rates. *Id.* at 4-5.

B. ***Discussion***

18. Section 204(a) grants this Commission authority and discretion to determine whether to investigate new and revised tariffs, to suspend the proposed rates, to direct the carrier to keep account of amounts paid by customers under the questioned rates after the rates become effective, and to order refunds of rates found unreasonable after investigation. Parties have suggested in the past that this Commission can only order refunds under Section 204(a) if we have imposed an accounting order and, in turn, that we can impose an accounting order only in conjunction with a Commission-ordered suspension. The argument, to state it in other terms, is that a suspension and an accounting order are conditions precedent to any refunds under Section 204(a).

19. The FCC does not accept this view of the statute. Section 204(a) reads as follows:

> Whenever there is filed with the Commission any new or revised charge, classification, regulation, or practice, the Commission may either upon complaint or upon its own initiative without complaint, upon reasonable notice, enter upon a hearing concerning the lawfulness thereof; and pending such hearing and the decision thereon the Commission, upon delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such charge, classification, regulation, or practice, in whole or in part but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearing the Commission may make such order with reference thereto as would be proper in a proceeding initiated after such charge, classification, regulation, or practice had become effective. If the proceeding has not been concluded and an order made within the period of the suspension, the proposed new or revised charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed charge for a new service or an increased charge, the Commission may by order require the interested carrier or carriers to keep accurate account of all amounts received by reason of such charge for a new service or increased charge, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such charge for a new service or increased charges as by its decision shall be found not justified. At any hearing involving a charge increased, or sought to be increased, the burden of proof to show that the increased charge, or proposed charge, is just and reasonable shall be upon the carrier, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

20. By its terms, Section 204(a) requires this Commission to give the affected carrier "reasonable notice" if we undertake a hearing and, if we suspend a tariff, "a statement in writing of its reasons for [the] suspension," which is limited to five months. After the hearing, the Commission "may make such order with reference thereto as would be proper in a proceeding initiated after such charge, classification, regulation or practice had become effective." Section 204 also states that the Commission "may" direct the keeping of accurate accounts and "may" subsequently direct refunds of the portions of the charge found not justified.

21. In the petitions for reconsideration now before us, NYNEX and GTE contend that the inclusion of both authority to impose an accounting order and to order refunds in the same clause of Section 204(a) requires us to conclude that the two are linked, *i.e.*, that we cannot order the latter without having imposed the former. We cannot agree that the language of the statute compels this conclusion. The language can as easily be read to allow refunds apart from accounting orders, as there is no specific language identifying the accounting order as a condition for refunds.[17] This lack of specificity contrasts sharply, for example, with the express requirements earlier in Section 204(a) that the Commission provide reasonable notice of a hearing and a statement in writing giving the reasons for a suspension.

22. Given the ambiguity in the language of Section 204(a), we turn to relevant judicial decisions and legislative intent regarding this language. Most importantly, we note the statement of the U.S. Court of Appeals for the District of Columbia Circuit, in the context of discussing 1976 amendments to Section 204, that "the FCC may order the carrier to keep track of the amounts customers pay to *facilitate* the FCC's *additional* power to require refunds to customers, if justified . . . ."[18] While the issue was not directly before the Court we find it instructive that the Court viewed accounting orders as an aid, not a prerequiste, to refunds, and that it viewed accounting orders and refunds as separate powers.

23. Consistent with this interpretation that Congress intended accounting orders merely to "facilitate" refunds is the fact that the purpose of accounting order authority is to help customers receive refunds, not somehow to provide an additional procedural roadblock that helps carriers prevent the agency from refunding rates that were unlawfully high. In *Arrow Transportation v. Southern Railway*, 372 U.S. 658 (1963), for example, the Supreme Court interpreted a similar provision of the Interstate Commerce Act. The Court observed that Congress first authorized the Interstate Commerce Commission (ICC) to impose accounting orders concurrently with its reduction of the maximum period for suspension of rates from 10 months to 5 months.[19] The Court noted that Congress did so to mitigate the burden placed on customers who might temporarily be required to pay unlawful rates if the suspension period expired before the ICC completed its review of the disputed charges.[20] Similarly, this Commission has stated that "[t]he purpose of an accounting order is to assure that, in the event the Commission were to find all or any part of a rate increase to be unjustified, the persons who would be entitled to a refund would receive the amount to which the Commission finds they would be entitled."[21] We have on several occasions reiterated the view that accounting orders are imposed for customer protection,[22] and we never have held that an accounting order is a necessary prerequiste to any subsequent decision to require refunds.

24. These cases demonstrate that the basic purpose of the authority to issue accounting orders was to add protections for customers, to maintain a fair balance between the needs of customers and the needs of carriers if rates that warranted investigation became effective before that investigation was concluded. There is no support in the Act, the legislative history, Commission decisions, or court cases relating to Section 204(a) or similar statutes for the argument that the accounting order provision was adopted in order to give notice to the carrier of the extent of its possible liability. This statutory analysis thus supports interpreting Section 204(a) accounting orders as optional protective measures which this Commission may elect to impose, but which are not necessary in order for the Commission to order refunds to customers. Indeed, under the circumstances of this case. An accounting order was unnecessary because there is no question that the carriers have the necessary information on hand to make the appropriate refunds.[23]

25. We also believe that the reasoning of the Supreme Court in the *Trans Alaska Pipeline Rate Cases* [24] supports our conclusion here. In that case, without relying upon an express grant of ancillary powers as is included in the Communications Act by Section 4(i), the Court nonetheless concluded that the cognate refund provisions of the Interstate Commerce Act did not curtail broader, ancillary powers to order refunds.[25] In *Trans Alaska*, the statutory language did not expressly authorize refunds for "new" rates, but only for "increased" rates. The Court, having emphasized the need to construe the statute "not only by its language but by its purpose if sense is to be made of the verbal accretions of many years,"[26] affirmed the imposition of an accounting order for new rates and, if appropriate, refunds, based upon the Interstate Commerce Commission's ancillary authority:

> [T]he Commission's refund conditions are a "legitimate, reasonable, and direct adjunct to the Commission's explicit statutory power to suspend rates pending investigation," in that they allow the Commission, in exercising its suspension power, to pursue "a more measured course" and to "offe[r] an alternative tailored far more precisely to the particular circumstances" of these cases. Since . . . the measured course adopted here is necessary to strike a proper balance between the interests of carriers and the public, we think the Interstate Commerce Act should be construed to confer on the Commission the authority to enter on this course unless language in the Act plainly requires a contrary result.[27]

26. Thus, the Court in *Trans Alaska* found that, even in the absence of an express statutory conferral of ancillary powers, agency flexibility in implementing accounting and refund functions is consistent with and desirable under an analogous statutory scheme. This case supports our interpretation of Section 204(a) in a flexible manner in order to strike the proper balance between the carriers' interests and those of the public by ordering refunds here.

27. Finally, we agree with Sprint that our Part 65 rules do not preclude us from ordering the refunds at issue here. In the *LEC Special Access Order*,[28] as here, carriers claimed that refunds could be required only when the authorized rate of return had been exceeded. In that Order, the Common Carrier Bureau found that nothing in Section 204(a) supported this contention, and stated that "[t]he Section 204(a) refund procedures are distinct from the Part 65 refund procedures for the enforcement of rate of return prescriptions."[29] We agree with that position.

V. OTHER ISSUES

28. At various times from June to September 1987, Pacific, US West, Ameritech, and Southwestern Bell filed letters requesting guidance as to their refund liabilities under the *Terms and Conditions Order*. No oppositions or comments were filed with respect to these letters.[30]

29. In its letter of June 26, 1987, Pacific states that its 1985 access tariff filing did not contain an increase in the number of minutes on which its MMUCs were based, nor did it apply the charge to elements other than local transport. Pacific states that it did propose a MMUC rate change, but the change was based only on a change in the underlying local transport rate. Thus, Pacific argues that it is in compliance with the *Terms and Conditions Order*, and is not liable for refunds. Pacific further states that it removed all MMUCs effective January 1, 1987, because of this Commission's allowance of more substantial non-recurring charges.

30. On July 2, 1987, US West filed a letter objecting to the refund obligations purportedly imposed upon Northwestern Bell (NWB) and Pacific Northwest Bell (PNB). According to US West, NWB's and PNB's 1985 access tariffs contained MMUCs based only on 3000 minutes of use (MOUs) and based on local transport charges, but not differentiated between common and dedicated transport. US West asks that no refund obligations be imposed on NWB or PNB.

31. Ameritech maintains that none of its companies has any refund liability. It asserts that the only increases proposed in the 1985 tariffs were based on increases in the local transport rate element. It did not propose to change the number of minutes on which the MMUCs were based, nor did it apply the MMUCs to rate elements other than local transport. The charges were, however, based on both dedicated and common transport. Ameritech dropped all of its MMUCs as of January 1, 1987.

32. SWB contends that it is also not liable for any refunds. It claims that the existing MMUCs were developed based on 3000 MOUs (the same as the pre-1985 MMUCs). SWB explains that the MMUCs increased because the underlying local transport rates increased as a result of SWB's withdrawal from the National Exchange Carrier Association (NECA) traffic sensitive pool, SWB's new 1985 revenue requirement, and a consolidation of the mileage bands. SWB submits that the MMUCs apply only to local transport, but cover both dedicated and common transport costs.

33. Since the investigation underlying the *Terms and Conditions Order* included only increases in MMUCs based on a higher MOU threshold and increases in MMUCs for rate elements other than local transport,[31] we conclude that Pacific, US West, Ameritech, and SWB are not subject to the refund requirement.

VI. CONCLUSION AND ORDERING CLAUSE

34. For the reasons discussed above, we find that petitioners have failed to present us with arguments sufficient to merit reconsideration of the *Terms and Conditions Order*.

35. Therefore, IT IS ORDERED that the petition for clarification or, in the alternative, reconsideration filed by MCI Telecommunications Corporation, the petition for partial reconsideration filed by the GTE Service Corporation, and the petition for reconsideration filed by New York Telephone Company and New England Telephone and Telegraph Company ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Annual 1985 Access Tariff Filings, CC Docket No. 86-125, Phase II, 2 FCC Rcd 1416 (1987) (*Terms and Conditions Order*).

[2] On April 22, 1987, we issued a Public Notice to clarify that filing dates for petitions relating to reconsideration of the *Terms and Conditions Order* would be calculated from the date the Federal Register summary was published. Commission Sets Pleading Cycle for Responses to Petitions for Clarification and Reconsideration of 1985 Annual Access Tariff Terms and Conditions Order, Public Notice, released Apr. 22, 1987. As a result of this Public Notice, MCI voluntarily refiled its petition on June 4, 1987.

[3] Annual 1985 Access Tariff Filings, Mimeo No. 7401, released Sept. 30, 1985 (*Suspension Order*).

[4] Annual 1985 Access Tariff Filings, CC Docket No. 86-125, Phase I, Order Designating Issues for Investigation, Mimeo No. 3642, released Apr. 14, 1986.

[5] Annual 1985 Access Tariff Filings, CC Docket No. 86-125, Phase II, Order Designating Issues for Investigation, Mimeo No. 4963, released June 9, 1986.

[6] *Terms and Conditions Order*, 2 FCC Rcd at 1438.

[7] *Id.*

[8] *Id.* at 1421.

[9] *Id.*

[10] *Id.* at 1446.

[11] *Id.* at 1424.

[12] *Id.* at 1421 (MMUCs), 1424 (presubscription change charges).

[13] Annual 1985 Access Tariff Filings, CC Docket No. 86-125, Phase II, 2 FCC Rcd 7534 (1987).

[14] Annual 1985 Access Tariff Filings, CC Docket No. 86-125, Phase II, DA 89-332, released Mar. 29, 1989. *See also* Annual 1985 Access Tariff Filings, CC Docket No. 86-125, Phase II, 3 FCC Rcd 1973 (1988) (June 30, 1988, deadline); Annual 1985 Access Tariff Filings, CC Docket No. 86-125, Phase II, 3 FCC Rcd 4063 (1988) (September 30, 1988, deadline); Annual 1985 Access Tariff Filings, CC Docket No. 86-125, Phase II, 3 FCC Rcd 5845 (1988) (December 30, 1988, deadline); Annual 1985 Access Tariff Filings, CC Docket No. 86-125, Phase II, DA 88-2004, Order, released Dec. 29, 1988 (March 31, 1989, deadline).

[15] The *Terms and Conditions Order* lists MCI as one of the commenters which does not object to the suggestion that billing issues be referred to the OBF. *Terms and Conditions Order*, 2 FCC Rcd at 1436, 1451 n.117.

[16] The *Suspension Order* did indeed extend the accounting requirement of CC Docket 85-166. *See Suspension Order* at para. 64. The Docket 85-166 accounting requirement, however, only covered special access rates and is therefore inapplicable to the

charges at issue here. *See* Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Mimeo No. 4726, released May 24, 1985.

[17] Although the Commission has often imposed accounting Orders to facilitate the possible disbursement of refunds, this practice does not reflect an interpretation of the Act's Requirements.

[18] *MCI Telecommuncations v. Federal Communications Comm'n*, 627 F.2d 322, 334 (D.C. Cir. 1980) (emphasis added).

[19] 372 U.S. at 665 (citing the Esch-Cummins Act of 1920, 41 Stat. 486-87).

[20] *Id.* at 665-66. *See also United States v. SCRAP*, 412 U.S. 669, 697 (1973) (reiterates that Congress authorized Interstate Commerce Commission to issue accounting orders to mitigate potential losses to customers); *American Tel. and Tel. v. Federal Communications Comm'n*, 487 F.2d 864, 873-74 (2d Cir. 1973) (extends rationale of Interstate Commerce Act cases to the Communications Act).

[21] Communications Satellite Corp., Investigation Into Charges, Practices, Classifications, Rates and Regulations, Docket No. 16070, 43 FCC 2d 386, 388 (1973).

[22] Investigation of Interstate Access Tariff Non-Recurring Charges, Phase I, Part 3, CC Docket No. 85-166, 2 FCC Rcd 3498, (1987); AT&T Communications, Tariff F.C.C. Nos. 9, 10, and 11, Transmittal Nos. 285, 318, 342, and 346, 103 FCC 2d 77, 117 (1985); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I and Phase II, Part 1, 102 FCC 2d 1007, 1013, 1023, 1037 (1985); American Telephone and Telegraph Company, Revisions to Tariff F.C.C. Nos. 258, 259, 260, 262, 263, 265, 266, 267, and 268 and the Associated Bell System Companies, Transmittal Nos. 13703-13708, *et al.*, Transmittal No. 13775, *et al.*, Transmittal No. 636, *et al.*, 86 FCC 2d 956, 968, 974 (1981); American Television Relay, CC Docket No. 78-24, 70 FCC 2d 1623, 1630 (1978).

[23] Because the refunds at issue here are the result of an access proceeding, the affected customers are all interexchange carriers. The LECs' refund obligations are therefore limited to a relatively small and easily identifiable group and are readily calculable.

[24] 436 U.S. 631 (1978).

[25] *Id.* at 654 (citing *United States v. Chesapeake & Ohio R. Co.*, 426 U.S. 500, 514 (1976).

[26] *Id.* at 649-50.

[27] *Id.* at 655-56 (quoting *United States v. Chesapeake & Ohio R. Co.*, 426 U.S. 500, 514 (1976)).

[28] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase I, 2 FCC Rcd 6847 (Common Carrier Bureau 1987) *(LEC Special Access Order)*.

[29] *LEC Special Access Order* at 6849. Moreover, the Part 65 refund rules have been effectively suspended pending further proceedings in light of the Court of Appeals opinion in *American Tel. and Tel. v. Federal Communications Comm'n*, 836 F.2d 1386 (D.C. Cir. 1988), *conditional petition for rehearing denied* Nov. 2, 1988.

[30] NYNEX also filed a letter in which it states that it has postponed the issuance of refunds until final resolution of the impending petition for reconsideration or the applicable refund deadline, whichever occurs earlier.

[31] *See Terms and Conditions Order*, 2 FCC Rcd at 1417.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-1,
Phase II

In the Matter of

Annual 1988 Access Tariff Filings

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: April 27, 1989; Released: April 27, 1989

By the Commission: Commissioner Dennis concurring in the result.

I. INTRODUCTION

1. Fourteen local exchange carriers have filed petitions for reconsideration of the *December 27 Order* [1] in this proceeding. That Order resolved a number of issues which the Common Carrier Bureau (Bureau) had designated for investigation in the *Phase II Designation Order*.[2] Petitioners object to the disallowances of projected revenue requirements associated with inside wire installation and maintenance, Central Office Equipment (COE) Category 3, message COE Category 4.23, special access COE Category 4.23, special access Cable and Wire Facilities (C&WF), excess deferred federal income tax, and, for New York Telephone Company only, an overstated special access loop count.[3]

2. Almost all petitioners contend that this Commission exceeded our statutory authority under Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), by ordering refunds in the absence of an accounting order. Some of these petitioners also maintain that we exceeded our authority under that section by ordering refunds of unsuspended or decreased rates. In addition, various petitioners argue that this Commission failed to explain adequately our rationale and methodology, failed to make necessary findings that the rates were unjust and unreasonable, improperly determined disallowances based solely on discrepancies between forecast and actual quantities, improperly imposed disallowances without setoffs for underearnings, failed to account for the role of NECA in the inside wire disallowance, used inappropriate data in the message COE Category 4.23 adjustment, and made various computational errors in all the types of disallowances. The Ad Hoc Users Group (Ad Hoc) filed the only opposition to the petitions. Three petitioners replied.

3. We conclude that we do have authority to impose refunds under Section 204(a) without an accounting order or suspensions. We also conclude, however, that Section 204(a) does not authorize us to order refunds of decreased rates. Access service customers may, of course, file complaints pursuant to Section 208 of the Act, 47 U.S.C. § 208, to recover reparations for excessive charges, including decreased charges that should have reflected larger decreases. We reaffirm the COE Category 3 disallowance for New England Telephone. In addition, we find that the particular comparisons of forecast and actual data used in the *December 27 Order* for the inside wire and the special access cost-demand disallowances may be inaccurate. Finally, we reaffirm the disallowances for excess deferred taxes and for New York Telephone's special access loop count, but we vacate the message COE Category 4.23 disallowance.

II. GENERAL ISSUES

A. *Statutory Authority To Order Refunds*

1. Background

4. On October 2, 1987, the local exchange carriers (LECs) filed their annual 1988 access tariffs. Many of these filings consisted of decreases, as well as increases, for various access rates. In the *Annual 1988 Access Order*, the Bureau instituted an investigation pursuant to Section 204(a) of the Communications Act and suspended the special access tariffs of several of the carriers because of certain apparent discrepancies between their cost and demand showings.[4] The Bureau elected not to establish an accounting order of the kind permitted under Section 204(a).

5. The *December 27 Order* found that various LECs had overstated revenue requirements for various investment and expense categories, computed disallowances from the base case revenue requirement that the LECs had used to compute 1988 access rates, and ordered those LECs to remedy these errors by either reducing the current rates to reflect these disallowances, reducing rates for the 1989-90 access period to reflect these disallowances, or refunding the amount of the disallowances directly to interexchange carriers or other persons who paid the access charges.

2. Pleadings

6. Petitioners argue that the disallowances in the *December 27 Order* violate the statutory scheme of Sections 201-205 of the Communications Act, 47 U.S.C. §§ 201-205. In particular, petitioners contend that this Commission cannot order refunds under Section 204(a) because the Bureau failed to impose an accounting order.[5] Petitioners characterize this statutory requirement as a narrow, carefully designed exception to the filed rate doctrine and the general rule against retroactive ratemaking, and they insist that it is an absolute precondition to subsequent refunds.[6] A few petitioners make similar arguments regarding other provisions of Section 204(a) insofar as: (i) this Commission had not previously suspended some of the rates;[7] (ii) this Commission did not make a formal finding that the rates were unjust and unreasonable;[8] and (iii) this Commission ordered refunds for some rates which represented decreases from the prior rates.[9]

7. According to petitioners, the "necessary and proper" clause of Section 4(i) of the Communications Act, 47 U.S.C. § 154(i), cannot fill the gap in authority because that section cannot authorize what Section 204(a) prohibits.[10] Petitioners also argue that the refunds cannot be justified under Sections 205 and 4(i), as in *New England Tel. & Tel. Co. v. F. C. C.*, 826 F.2d 1101 (D.C. Cir.

1987), *rehearing denied*, No. 85-1087, slip op. (Oct. 2, 1988) (*New England Telephone*), [11] because that remedy applies only to enforcement of this Commission's prospective prescription of overall rate of return and there is nothing in the present record to establish that this has been such a proceeding.[12]

8. Ad Hoc responds that this is indeed a rate of return enforcement proceeding under Sections 205 and 4(i), of the kind approved in *New England Telephone*, because Paragraph 273 of the *December 27 Order* clearly provides for setoffs of the disallowances by revenue shortfalls. The only difference between the *New England Telephone* case and the instant proceeding, Ad Hoc argues, is that here certain corrections of regulatory errors were made before computing earned rate of return. Accordingly, Ad Hoc concludes, an accounting order pursuant to Section 204(a) is unnecessary. Ad Hoc Petition at 2-7.

3. Discussion

9. We have recently held in the *Terms and Conditions Reconsideration Order*,[13] that an accounting order is not a condition precedent to imposition of Section 204(a) refunds, and we conclude that this decision is dispositive of these petitioners' contentions that an accounting order is a condition precedent for any Section 204(a) refund. We also reject the contention that a suspension is a condition precedent for a Section 204(a) refund. The language of Section 204(a) does not support the claim that a refund must be preceded by a suspension, nor have any cases been cited that support this claim.

10. We do conclude, however, that disallowances affecting Carrier Common Line (CCL) rates cannot properly be reflected in refunds from individual carriers because these errors were reflected in pool rates filed by the National Exchange Carriers Association. NECA was not named as a party in this docket and accordingly cannot be ordered to refund these amounts at this time. NECA's access customers can, of course, file Section 208 complaints against NECA to recover reparations for excessive rates.

11. Our decision to vacate refunds attributable to CCL rates largely moots the question of our Section 204(a) authority to order refunds for excessive rates that represent decreases from prior rates. We believe we have the authority to order these refunds.[14] We recognize, however, that the question of our legal authority is a highly controverted one. In order to avoid possibly protracted litigation that would ultimately delay remedies for consumers, we are also vacating the relatively insubstantial refunds that relate to other decreased rates. Our decision does not, of course, foreclose Section 208 complaints to recover those rates. In light of our legal conclusions herein, we believe that such complaints could be resolved expeditiously, well before the statutory one-year period.[15]

12. Our decision to refrain from ordering rate adjustments to remedy insufficient rate decreases does not, however, make the revenue requirement disallowance findings in the *December 27 Order* moot. Such a disallowance finding would be *prima facie* evidence in a Section 208 complaint proceeding. We are accordingly reexamining each disallowance that has been questioned in reconsideration petitions to determine whether the particular disallowance finding should be reaffirmed.

B. *Comparison of Forecast and Actual Data*

1. Background

13. The *December 27 Order* based two of our disallowances on comparisons of forecast and actual quantities reported by a given carrier. For inside wire, we compared that carrier's adjusted Tariff Review Plan (TRP) forecast of interstate Account 6362 expense with its actual interstate Account 6362 expense (as annualized from the first four months of 1988), and ordered a disallowance for any overestimate of more than 5 percent. *Id.* at paras. 29-30, 33. For special access cost and demand discrepancies, we compared the carrier's TRP forecast of interstate private line C&WF and COE Category 4.23 investment with its actual interstate private line C&WF and COE Category 4.23 investment (as derived from second quarter Automated Reporting Requirements for Class A and Tier 1 Telephone Companies (ARMIS) reports), and ordered a disallowance for any overestimate of more the 5 percent. *Id.* at paras. 173-174.

2. Pleadings

14. Petitioners assert that this Commission's method of comparing projected and actual data is unsupported by any reasoned explanation in the *December 27 Order* and that this method of computing disallowances constitutes arbitrary and capricious decision-making. They contend that the Order made no finding that the rates themselves were unjust and unreasonable or that the forecasts were unreasonable when made. Since even reasonable forecasts will usually vary somewhat from actuals, they argue, penalizing them with perfect hindsight for wrong but not unreasonable estimates is an unjustified form of strict liability.[16] This unfairness is aggravated, they add, when only the discrepancies tending to result in over-recovery of their revenue requirements are selected for adjustment.[17]

15. Many petitioners also object that the time periods from which the actuals were derived were too short, and several of these petitioners recompute the adjustments using data now available from longer periods.[18] In addition, some petitioners maintain that this Commission's use of a 5 percent cutoff was arbitrary and capricious.[19]

16. Ad Hoc responds, in part:

> [A]ctual data generally were employed [by this Commission] as a means of determining the level of disallowance following Commission determination of methodological or data error, not as simple checks on forecast accuracy.

Ad Hoc Opposition at 11.

3. Discussion

17. Ad Hoc's description of our use of comparisons of forecast and actual data in this proceeding is essentially correct. From the outset of this investigation, we found indications that the revenue requirement computations on which the carriers based their annual 1988 access filings may have reflected misapplications or misunderstandings of certain of this Commission's Rules. For inside wire expense, there was reason to believe that some of the carriers may have incorrectly apportioned recently detariffed expenses to regulated activities and that the

regulated interstate expense projections were therefore overstated.[20] For special access cost and demand discrepancies, there was reason to believe that some of the carriers failed to adjust their cost projections and separations allocations to reflect anticipated declines in their ratemaking demand projections and that these cost projections were therefore overstated.[21] We in fact found that carriers had used improper or unreliable methods to apportion some investment and expense between regulated and nonregulated activities and between interstate and intrastate services. Such findings would warrant some disallowance from the base case revenue requirement computation even if the budget projections for the firm as a whole were correct.

18. If we had reached the same conclusion early in the access year, we would have adjusted the base case revenue requirement computation to reflect the methodological errors. Inasmuch as reported actual results were available for several months when we computed disallowances, we decided that comparing reported actual and projected results would be an adequate proxy for computations that reflect the methodological errors in applying our cost apportionment rules. We also believed that the use of such a proxy would produce a fairer result.

19. We do not view this proxy method as optimal. We reject, however, petitioners' claim that any such comparison is *per se* unlawful under the Communications Act. Rather, we believe that each individual case must be scrutinized as a whole to determine whether it constitutes a legitimate and reasonable use of the comparison method. We perform this evaluation for the inside wire adjustment and the special access adjustment in specific sections later in this Order and conclude there that both adjustments were inappropriate and should be modified on reconsideration.[22]

C. *Setoffs for Revenue Shortfalls*

1. Background

20. The *December 27 Order* reviewed various components of revenue requirement and demand computations and determined that disallowances should be imposed for certain errors. Our disallowances did not account for potential setoffs from overall underearnings relative to the maximum allowable rate of return for the service category or for total company interstate operations. These disallowances also did not account for any overearnings attributable to matters that were not designated for investigation in this docket, such as underestimates of revenues from high capacity special access services. In the concluding section of the Order, however, Paragraph 273 provided directions on the method and format which the LECs should use if they intended to "assert that a 1988 revenue shortfall will affect the revenue disallowances imposed here."[23]

2. Pleadings

21. Petitioners argue that this Commission's action in the *December 27 Order* is arbitrary and capricious and otherwise unlawful because it recognized only factors which tended to result in over-recovery of revenue requirements and did not allow setoffs for overall earnings shortfalls.[24] Petitioners maintain that this is just the kind of systematic bias which a Court of Appeals condemned in *AT & T v. F. C. C.*[25] with respect to the Docket 84-800[26] automatic refund provision.[27] Many petitioners present calculations purportedly showing that recognition of countervailing factors would reduce their disallowances or that imposition of the disallowances would result in their earning less than a 12 percent return on one or more service categories.[28]

22. Ad Hoc replies that Paragraph 273 of the *December 27 Order* clearly shows that setoffs will be allowed, thereby making this a rate of return enforcement proceeding. Ad Hoc Opposition, at 6-11. In addition, Ad Hoc argues that this Commission is empowered to select a limited number of issues for investigation pursuant to Section 4(j) of the Communications Act, 47 U.S.C. 154(j), and that this Commission is not obligated in every investigation to consider all possible issues which might yield compensating adjustments. *Id.* at 12.

3. Discussion

23. We did not initiate this investigation as a Section 205 rate of return enforcement proceeding *per se*, and Paragraph 273 of the *December 27 Order* does not commit us to making it one now. Rather, this has been a focused investigation under Section 204(a) of certain potential misapplications of this Commission's Rules which we encountered in the tariff review process of the Annual 1988 Access Tariff Filings. Empowered by Section 4(j) to structure our own proceedings, we have maintained that focus throughout. In the *December 27 Order* concluding the investigation, we determined that the annual tariff filings of some carriers did in fact misapply several of this Commission's Rules. Although we are modifying some of those findings in this Order, the basic nature of the investigation remains unchanged as a Section 204(a) proceeding.

24. We recognize, however, that a finding that a component of the revenue requirement has been overstated does not inevitably lead to the conclusion that the resulting rate is unjust and unreasonable. If a carrier purports to target rates to earn the authorized target return, we can reasonably assume, in the absence of clear and complete contrary evidence, that the uninvestigated revenue requirement and demand components were correctly computed. We have not, however, foreclosed carriers from presenting such "setoff" evidence to avoid or reduce refunds in this proceeding or reparations in any future Section 208 proceeding that may be based in whole or in part upon our findings and conclusions in this case.

III. INSIDE WIRE EXPENSE

A. *Background*

25. Inside wire installation and maintenance expense, which is recorded in Account 6362, Other Terminal Equipment expense, was detariffed effective January 1, 1987.[29] In the *Phase II Designation Order*, the Bureau noted that the LECs' projections of plant-specific expense in the CCL revenue requirement of their 1988 TRPs remained surprisingly high in spite of the detariffing. Accordingly, the Bureau directed the LECs to submit data and justifications supporting their apportionment of the relevant expenses between regulated and nonregulated activities.[30] In their submissions, the LECs asserted that their forecast CCL revenue requirements did not contain any nonregulated expenses. The LECs argued that regulated plant-specific CCL expense in their TRPs is not

coextensive with Account 6362, and that, contrary to the claims of AT&T, Account 6362 still includes certain regulated expenses for plant such as network terminating wire. Thus, the LECs maintained, the relevant costs in question had already been apportioned in conformance with the *Joint Cost Order*. *See December 27 Order* at para. 26.

26. The *December 27 Order* made adjustments to reflect the differences between TRP plant-specific expense and Account 6362 and acknowledged that some network terminating wire was still regulated. This Commission then found that, even taking account of these factors, the LEC apportionments were inaccurate. *Id.* at paras. 27-28. This Commission also noted that the then effective versions of the LECs' cost allocation manuals, established in compliance with the *Joint Cost Order*, were still in the process of implementation and modification in October 1987 when the TRP forecasts were made. *Id.* at para. 29. Accordingly, we compared adjusted forecast TRP plant-specific expense with annualized actual Account 6362 expense, as described in Section II.B, *supra*, resulting in a disallowance of $96 million.

B. ***Pleadings***

27. Petitioners' contentions regarding the comparison of forecast and actual inside wire expense have already been described in Section I.B, *supra*. In addition, almost every petitioner subject to the inside wire disallowance objects to this Commission's failure to take account of nationwide averaging of CCL rates and nationwide pooling of CCL revenues through NECA in ordering rate adjustments or refunds.[31] Finally, several petitioners complain that this Commission should have used the LECs' own forecasts of inside wire expenses which they actually used and submitted in their annual 1988 filings or in their Phase II data request responses, instead of Commission estimated forecasts derived from adjustments to the LECs' TRP plant-specific revenue requirement for CCL. These petitioners then recompute their disallowances on this basis, resulting in reduction or elimination of the disallowances.[32]

C. ***Discussion***

28. As discussed in Section II.A, *supra*, the fact that most of the LECs' inside wire expenses were recovered through 1988 CCL rates leads us to conclude that we are precluded from imposing Section 204(a) refunds to remedy these LEC errors. This renders moot petitioners' claims that we should have taken account of NECA's role.

29. Petitioners' principal remaining contention concerns our comparison of forecast and actual Account 6362 expense in determining the disallowance. The Bureau's recent *Annual 1989 Access Order* [33] concluded that the LECs' TRP projections for the 1989 rates, which were based on their reported "actual" 1988 test year data, appear to reflect serious errors in the implementation of the revised cost manuals and that these errors resulted in excessive apportionment of inside wire expense to regulated activities. *Id.* at paras. 62-86. This means that the "actual" data on which we based the comparison in the *December 27 Order* were probably seriously overstated and that the potential disallowances for the annual 1988 rates may be much larger than we thought.

30. In Section II.B, *supra*, we concluded that each particular comparison of forecast and actual data should be assessed in terms of the individual case as a whole and in light of alternative options. The instant case is clearly one in which comparison of forecast and actual data is not likely to produce an appropriate disallowance. Reaffirming a disallowance that is likely to be too small could unfairly prejudice customers in any future Section 208 proceedings. Accordingly, we do not reaffirm the disallowance in the *December 27 Order* to the extent it relies on a comparison of projected and actual inside wire expense.

IV. COE CATEGORY 3

A. ***Introduction***

31. Effective January 1, 1988, this Commission revised the Separations Manual to consolidate the former Central Office Equipment (COE) Category 6, Local Dial Switching Equipment, with other, less significant switching categories, to form a new category, COE Category 3, Local Switching Equipment, to be allocated between the jurisdictions on the basis of Dial Equipment Minutes (DEM).[34] The LECs are required to phase in the DEM allocation factor over the 1988-1992 period in order to forestall substantial shifts in costs from the interstate jurisdiction to the intrastate jurisdiction which the Joint Board anticipated if the new procedures were implemented on a immediate basis. Under the new procedures, the LECs calculate a frozen composite allocation factor that reflects the total interstate allocation for the combined Part 67 local switching COE categories as of December 31, 1987.

32. The Bureau observed in the *Annual 1988 Access Order* that the access filings of many LECs exhibited an unexpected shift of new COE Category 3 investment to the interstate jurisdiction (3 FCC Rcd at 1289, para. 65), and the *Phase II Designation Order* directed these LECs to provide a detailed, well-documented explanation of the reasons for the increase. 3 FCC Rcd at 3103 and Attachment A. We determined in the *December 27 Order* that the responses of most LECs to this request were adequate to justify the observed increases. In particular, the Order accepted their claims that, under the phase-in formula, only a small portion of the overall 1988 allocation factor was attributable to the new DEM factor and that most of the increases in interstate allocations were due to growth in the absolute amount of investment. *Id.* at paras. 46-47. We concluded that, although several carriers had improperly computed their 1988 allocations, only NET had materially exceeded the correct interstate ratio and was therefore subject to a disallowance of $3 million. *Id.* at para. 48.

B. ***Pleadings***

33. In its petition, NYNEX argues that this adjustment is another example of comparing forecast and actual data, *i.e.*, comparing its TRP forecast of the December 31, 1987, composite ratio with the actual such ratio. NYNEX Petition at 12-13. NYNEX also claims that there was no rational explanation for the adjustment in the *December 27 Order*. *Id.* Finally, NYNEX argues that the computation is erroneous because NET mistakenly reported incorrect data in response to data requests. *Id.* at 13-14.

C. *Discussion*

34. Here again, the fact that NET's 1988 switched traffic sensitive rates were decreases leads us to refrain from ordering a refund, but we nevertheless find it appropriate to address the substantive issue raised by the NYNEX petition. NYNEX's characterization of this adjustment as a comparison of projected and actual data is misleading. The December 31, 1987, composite ratio was a known historical fact when the Bureau issued the *Phase II Designation Order* and subsequent data requests to verify whether NET had properly implemented the phase-in. Furthermore, the October 2, 1987, TRP was filed only three months before the actual date, and there is no excuse for the large discrepancy. Accordingly, we reaffirm this disallowance finding.

V. MESSAGE COE CATEGORY 4.23

A. *Background*

35. The Part 36 revisions of the Separations Manual changed Part 67 rules for circuit equipment in a number of ways.[35] Part 67 apportioned former COE Category 8.23, All Other Interexchange Equipment, to cost categories on the basis of circuit miles. It further provided for jurisdictional apportionment of the resulting categorized investment by (i) direct assignment of all private line investment, (ii) direct assignment of message (*i.e.*, switched traffic sensitive access) investment where possible, and (iii) allocation of the remaining portion of joint message investment which could not be directly assigned on the basis of conversation-minute-miles (CMM). Both circuit miles and CMM were distance sensitive factors.

36. Part 36 consolidates former COE Category 8.23 with certain other, less significant former categories of circuit equipment to become the new COE Category 4.23, All Other Circuit Equipment.[36] Part 36 establishes cost categories of this investment on the basis of circuit terminations. It provides for jurisdictional apportionment by (i) direct assignment of all private line investment, (ii) direct assignment of message investment, where possible, and (iii) allocation of all remaining message investment on the basis of conversation-minutes (CM). Both circuit terminations and CM are distance insensitive factors.

37. To determine whether the carriers failed to implement properly the COE Category 4.23 rules and assigned too much investment to the interstate jurisdiction, the *Phase II Designation Order* required data submissions reflecting the carriers' projected 1988 investment and separations factors for this category. 3 FCC Rcd at 3103-04, paras. 4-7. This Commission compared these submissions with comparable actual 1987 data which the carriers had recently submitted to the Docket 80-286 Joint Board.

38. We determined in the *December 27 Order, inter alia*, that four carriers had assigned too much investment to the interstate jurisdiction by using incorrect CM factors. Specifically, we noted that the interstate portions of joint message Category 4.23 COE of the four carriers did not change in the anticipated manner from 1987 (under Part 67) to 1988 (under Part 36), even though large amounts of investment which previously had been directly assigned were later apportioned by CM. *Id.* at paras. 91-95. To quantify the effect of these apparently improper assignments, this Commission used the interstate portion of the 1987 CM counts as surrogates for the appropriate 1988 interstate CM factors. We then imposed disallowances totaling $45 million for these four carriers based on the difference between their projected Category 4.23 COE investment and the surrogates. *Id.* at para. 96.

B. *Pleadings*

39. Two petitioners, NYNEX (on behalf of both NYT and NET) and Pacific Bell, allege that the "1987 CM" was merely a hypothetical figure requested by the Joint Board and had never actually been used to develop their rates. Futhermore, they note that the Joint Board had specifically requested that this hypothetical "1987 CM" be computed on the same basis (including the elimination of any message direct assignment) that Part 36 required for 1988. Accordingly, they assert, the hypothetical apportionment would necessarily be approximately the same as the projected 1988 apportionment. NYNEX Petition at 14-16; Pacific Bell Petition at 20-28. In addition, these petitioners argue that this Commission's use of the 1987 apportionment for 1988 is arbitrary and capricious because it was originally developed under rules which are now superseded. NYNEX Petition at 16-18; Pacific Bell Petition at 28-36.

C. *Discussion*

40. We have reviewed petitioners' arguments and citations, and we conclude that the Joint Board did indeed instruct the LECs to compute their hypothetical "1987 CM" in conformance with Part 36. We accordingly vacate these disallowances as to all LECs.

VI. CONSISTENCY OF COST AND DEMAND PROJECTIONS

A. *Background*

41. In Phase I of this investigation, the Bureau was unable to resolve definitively whether the LECs had failed to reflect projected declines in demand for voice grade special access service in their projections of both corresponding Cable and Wire Facilities (C&WF) plant and corresponding transmission COE plant, as well as in their separations allocation factors associated with that plant.[37] Conseqently, the Bureau required further submissions from the LECs in the *Phase II Designation Order* to (i) justify their forecasts of separations factors, and (ii) explain their method for reconciling separations projections and data with demand forecasts and data. 3 FCC Rcd at 3103-04, paras. 4-11.

42. In their Phase II direct cases, some LECs responded that no reconciliation or proportionality is possible because ratemaking demand projections are based on different units of measure than separations cost projections. *See December 27 Order* at paras. 144-171. They maintained that there is no precise relationship between channel miles and circuit miles or between channel terminations and loops. Other LECs contended that they had achieved an acceptable approximation of consistency in these relationships or that any inconsistency had not affected rate development in a manner that could harm ratepayers. *Id.*

43. Our *December 27 Order* rejected the LECs' arguments that it is impossible to reconcile cost and demand projections, and we observed that these LECs had failed to comply with the direction to do so imposed by the Bureau in the *Phase II Designation Order*. *Id.* at paras.

172-173. We then noted that we had determined from data in the record that the investment and demand factors of many LECs were indeed inconsistent for both C&WF and transmission COE Category 4.23. We computed the revenue requirement disallowance by comparing the LECs' actual 1988 investment, as reported in second quarter ARMIS filings, with their TRP forecasts, and by computing disallowances for all forecasts which exceeded actuals by more than 5 percent. The total disallowance from revenue requirements was $89 million. *Id.* at paras. 173-74, and Attachment H. Finally, we stated that, while this Commission will not mandate any particular method to effect cost-demand consistency, we will require that the LECs' future access filings specify their methodology for projecting separations factors and for achieving consistency between cost and demand projections. *Id.* at 82, para. 175.

B. *Pleadings*

44. Petitioners' general contentions regarding the comparison of forecast and actual data have already been described in Section II.B, *supra*, and their general contentions regarding setoffs have already been described in Section II.C, *supra*. In addition, petitioners assert that this Commission erred by only considering the separations and cost side of the comparison, ignoring potential setoffs from reduced demand and revenue. Nevada Bell Petition at 7-8; NYNEX Petition at 19; SNET Petition at 4-5. Some petitioners complain that this Commission ignored their specific arguments that reconciliation of cost and demand units is impossible, while other petitioners complain that this Commission ignored their specific arguments that they had succeeded in reconciling those units. Ameritech Petition at 19-21; BellSouth Petition at 13-18; Pacific Bell Petition at 36-37. Finally, some petitioners charge that this Commission asserted conclusively that reconciliation is possible but then did not explain how the reconciliation should be accomplished. Ameritech Petition at 21-22; BellSouth Petition at 16.

C. *Discussion*

45. We concluded in the foregoing section on comparison of forecast and actual data that each such case should be evaluated as a whole to determine if the particular use of the comparison method is reasonable. Petitioners raise some significant points which bear on that determination here. Several note that voice grade demand declined even more sharply than they projected in their October 2, 1987, access filings, and our own investigation on that issue bears this out. *See December 27 Order* at paras. 122-141. They also argue this caused their projected revenues to exceed actual revenues in much the same way as their projected costs exceeded actual costs, thereby creating potential setoffs. Moreover, some petitioners claim persuasively that they did achieve a reasonable approximation of consistency between separations and demand quantities but that a precise reconcilation is very difficult, if not impossible.

46. On reconsideration, we find that these contentions, while not indisputable, are sufficiently meritorious to weigh significantly against reaffirming a disallowance based on this particular comparison of forecast and actual quantities. We therefore vacate the refund requirement.

VII. TAX ISSUES

A. *Background*

47. The successive tax reductions in 1987 and 1988 under the Tax Reform Act of 1986 (TRA)[38] created an excess in accumulated deferred income tax credits equal to the difference between previously deferred taxes at old higher rates and future payable taxes at the new lower rate. Since this excess will not be payable to the the Internal Revenue Service, but has been recognized as tax expense in previous years for ratemaking purposes, the excess has the effect of increasing net income of current and future years. Section 203(e) of the TRA precludes regulators from flowing the excess through income determinations in any manner other than that stipulated in the TRA.

48. The Bureau noted indications that some LECs had either misapplied or ignored the flow back rules,[39] and required submissions showing compliance.[40] Based on the LECs' direct cases and additional data requests, we imposed in the *December 27 Order* revenue requirement disallowances on several LECs for various deficiencies totaling $37.8 million.

B. *Pleadings*

49. Several petitioners argue that significant amounts of the excess deferrals are attributable to past CCL rates filed by NECA and that the LECs cannot refund them unilaterally. Ameritech Petition at 19, 23; Centel Petition at 3-4; Cincinnati Petition at 16-18; Contel Petition at 4-5; NYNEX Petition at 11. Ameritech also argues that its disallowance for Michigan Bell should be offset by a tax overstatement (arising from a matter other than excess deferrals). Ameritech Petition at 22-23. Centel also maintains that there were two computational errors resulting from use of the wrong data for tax rate differential amortization amounts and from inclusion of some non-access data. Centel Petition at 1-2,4-5. Cincinnati also argues that its disallowance should be offset by a number of other tax overstatements (arising from matters other than excess deferrals) and that there are computational errors resulting from use of some non-access data and from failure to account for a midcourse correction filed on October 19, 1988. Cincinnati Petition at 14-18. Contel also argues that there were computational errors resulting from use of incorrect allocation factors and failure to recognize offsetting effects on the deferred tax balance. Contel Petition at 5-7. Finally, United argues that there was a computational error resulting from failure to use data from its revised filing of August 26, 1988, and that setoffs should be permitted for revenue shortfalls. United Petition at 1-3.

C. *Discussion*

50. We are limiting the tax expense refunds to the portion of the disallowances that are attributable to increased rates. We are not, however, vacating the disallowance findings *per se* and will therefore address the petitions. The claims regarding NECA are rendered moot by our decision not to order refunds in this Order for decreases. We find most of the claims regarding purely computational errors to be valid, and we have revised the disallowances accordingly as detailed in two appendices. Appendix B shows the amounts of the disallowances attributable to rate increases, after the computational adjustments, which are subject to refund pursuant to this

Order, totaling $14.0 million. Appendix C shows the amounts of the disallowances attributable to rate decreases, after the computational adjustments, which may be sought in Section 208 proceedings, totaling $21.7 million.

51. Finally, we find that the LECs which are subject to a refund obligation at this time have failed to demonstrate that any "setoff" would be warranted. A carrier cannot avoid such a refund by merely demonstrating that it understated some other tax expenses. A carrier would have to demonstrate that net errors in the totality of the other relevant revenue and revenue requirement computations will produce a shortfall that exceeds the disallowance.

VIII. NEW YORK TELEPHONE LOOP COUNT

A. *Background*

52. During Phase I of the investigation, Western Union filed a motion requesting this Commission to investigate discrepancies between data which NYT filed with the New York Public Service Commission (NYPSC) on December 31, 1987, and other data which NYT provided to this Commission in its October 2, 1987, Annual 1988 Access Tariff Filing and its January 25, 1988, Phase I direct case.[41] The Western Union Motion stated that NYT's submissions to this Commission showed a projected loop count of 538,352 whereas NYT's submission to the NYPSC showed a projected loop count of only 500,630 and declining. The higher loop count would inflate its apparent revenue requirement by raising both its rate base C&WF investment and its allocation factor for this investment. The *Phase II Designation Order* directed NYT to respond to the allegations in the Western Union Motion. *See* 3 FCC Rcd at 3104.

53. In its Phase II direct case, NYT stated that the difference between the projections was partly caused by a switch from an engineering database to a billing database, resulting in a decrease of approximately 40,000 loops. NYT stated that the difference was also caused by a decline in voice grade special access demand much greater than anticipated. NYT further stated that it did not file an update with this Commission because none was requested. NYT Phase II Direct Case at 26-28. NYT next presented a number of arguments purporting to show that its forecast reported to this Commission was reasonable after all, but NYT acknowledged that its correct loop count for the relevant period was 413,534, considerably lower than Western Union's estimate. *Id.* at 28-31. NYT then described extensive revisions which it was making to its overall 1988 special access forecast which allegedly showed that its special access rates were reasonable in spite of the loop overstatement. *Id.* at 4-6, 36-39.

54. Ad Hoc responded at length to NYT's Phase II direct case, alleging that NYT's overall forecast revisions were misleading and unsupported and that, even if implemented, the NYT rates still would result in special access overearnings. Ad Hoc Phase II Opposition at 55-66. In its rebuttal, NYT stated, *inter alia*, that the disallowance should not be imposed because its Form 492 special access earned rate of return for the first quarter of 1988 was 11.63 percent. NYT Phase II Rebuttal at 25-32.

55. We determined in the *December 27 Order* that the 538,353 loop count which NYT initially reported to this Commission was seriously in excess of the revised 413,038 loop count (or 418,244, including Hi-Cap) which NYT reported to the NYPSC shortly thereafter. The Order then stated:

> We believe NYT should have disclosed, before the effective date of the tariffs, its belief that the underlying data for its access tariffs were inaccurate. Common Carrier Bureau orders adopting tariff review plans describe such a continuing obligation to correct erroneous data and rates.

Id. at para. 252 (citations omitted). We therefore ordered that NYT's C&WF special access investment be reduced by $62.3 million, resulting in a revenue requirement reduction of $16.1 million.

56. We then rejected NYT's claim that its first quarter underearnings, which NYT ascribed to the drop in demand and other factors, should be applied as a setoff to the disallowance. We stated that opposing parties had raised substantial doubts about these actual figures and that NYT's base case, combined with the 418,244 loop count, should be used as the basis for computing the disallowance. *Id.* at para. 253. This Commission also noted that NYT's Form 492 special access earned rate of return for the second quarter of 1988 was 13.23 percent and that NYT was therefore very close to the authorized 12 percent return for the first half of 1988. *Id.* at para. 255.

B. *Pleadings*

57. NYT's petition does not challenge this Commission's determination of the correct loop count, but it does object to our determination of its disallowance. NYT briefly reiterates its previous argument that this Commission should consider the decline in special access voice grade demand as the primary factor in the loop count reduction. NYT Petition at 21-22. NYT also argues that our retroactive review of NYT's 1988 rate of return is irrelevant to whether its original projections were reasonable based on historical data. *Id.* at 22.

58. NYT further contends that if this Commission does consider actual results, we should consider recently reported data in the TRP from NYT's 1989 access tariff filing, which purportedly show an overall special access revenue shortfall for the entire 15-month 1988 tariff period of $22 million, more than enough to offset the $16 million disallowance. *Id.* at 22-23. Finally, NYT suggests other offsetting adjustments arising from out-of-period billing adjustments, intermediate termination counts, and revised direct assignment of HiCap investment. *Id.* at 23-25. NYT then concludes: "If the Commission is going to make rate decisions based on a post hoc comparison of forecasts vs. actuals, it should rely on the best actual data available." *Id.* at 25.

C. *Discussion*

59. This disallowance was not based upon a comparison of forecast and actual results; the disallowance was imposed to reflect the effect of NYT's use of erroneous historical investment data in the computation of its base case revenue requirement. That error is undisputed. No new evidence has been presented which would justify changing the amount of the disallowance. Since the rel-

evant special access rates were increased in the 1988 NYT tariffs, there is also no reason to refrain from ordering a refund at this time.

60. The discussion of actual results in the *December 27 Order* responded to the carrier's setoff claim. We found that the available data did not warrant a finding that NYT would be likely to experience a shortfall in special access earnings in the 1988-89 access period. The additional data that NYNEX presented in the reconsideration petition is too speculative to warrant changing that finding.

61. In this context, there is an overarching factor in this proceeding which NYT's petition fails to mention: NYT's initial overstatement of its loop count to this Commission was seriously negligent at best and bordered on misrepresentation. For this reason, we conclude that we should resolve any doubts in the customers' favor in evaluating NYT's setoff claims. We therefore deny NYT's petition and affirm the refund requirement of $16.1 million.

IX. UNJUST AND UNREASONABLE RATES

62. The *December 27 Order* did not declare that all access rates that reflected disallowed investment or expense are unjust and unreasonable because carriers might be able to demonstrate that these errors in revenue requirement computations produced an earnings shortfall. The reconsideration petitions do not demonstrate such an offset for the disallowances that are subject to the refund requirement in this Order. We accordingly conclude that those rates were in fact unjust and unreasonable and that the revenues exceeded revenues that would have been produced by just and reasonable rates by at least the amounts listed in Appendix B for the excess income tax deferral issue and $16.1 million for the NYT special access loop count issue.

63. We cannot exclude the possibility that these rates exceeded just and reasonable rates by an even greater amount for reasons other than the erroneous NYT special access loop count and the errors in tax expense computation. Our conclusion should not be construed to foreclose reparation claims based upon other errors in revenue requirement computations.

X. ORDERING CLAUSES

64. IT IS ORDERED, in accordance with the authority of this Commission under Sections 4(i) and 201 through 205 of the Communications Act, 47 U.S.C. §§ 4(i), 204 - 205, that the petitions for reconsideration filed on January 27, 1989, by Ameritech Operating Companies, Bell Atlantic Telephone Companies, BellSouth Telephone Campanies, Centel Telephone Companies, Cincinnati Bell Telephone, Contel Corporation, GTE Operating Campanies, Nevada Bell, New England Telephone and Telegraph Company, New York Telephone Company, Pacific Bell Telephone Company, Southern New England Telephone Company, Southwestern Bell Telephone Company, United Telephone System Companies, Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company ARE GRANTED to the extent indicated herein but are otherwise DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

Local Exchange Carriers Filing Petitions for Reconsideration

Ameritech Operating Companies (Ameritech)

Bell Atlantic Telephone Companies (Bell Atlantic)

BellSouth Telephone Companies (BellSouth)

Centel Telephone Companies (Centel)

Cincinnati Bell Telephone (Cincinnati)

Contel Corporation (Contel)

GTE Operating Companies (GTOC)

Nevada Bell

New England Telephone and Telegraph Company (NET)

New York Telephone Company (NYT; collectively with NET, NYNEX)

Pacific Bell Telephone Company (Pacific Bell)

Southern New England Telephone Company (SNET)

Southwestern Bell Telephone Company (SWB)

United Telephone System Companies (United)

Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (US West)

Local Exchange Carriers Filing Replies to Opposition of Ad Hoc Users Group

GTOC

NYNEX

Pacific Bell

APPENDIX B

DISALLOWANCES FOR EXCESS DEFERRED
TAXES TO BE REFUNDED PURSUANT TO THIS ORDER

$,000

NAME	TRAFFIC SENSITIVE DISALLOWANCE	SPECIAL ACCESS DISALLOWANCE	
Indiana Bell	935	0	
Michigan Bell	2,026	1,111	
Wisconsin Bell	0	413	
Centel - Florida	0	0	
Centel - Nevada	0	0	
Cincinnati Bell	722	494	
Contel - California	0	15	
Contel - New York	66	0	
Contel - Texas	0	6	
Contel - Virginia	0	19	
GTE North - Illinois	545	67	
GTE North - Indiana	990	265	
GTE North - Michigan	207	36	
GTE North - Ohio	455	99	
GTE North - Pennsylvania	204	54	
GTE North - Wisconsin	370	71	
GTE North - Iowa	75	14	
GTE North - Missouri	47	10	
GTE of the South - TOTAL	1,345	342	
GTE of the SW - TOTAL	0	259	
Hawaiian Telephone	0	0	
GTE - Florida	1,525	367	
New England - TOTAL	0	827	
United - Florida	0	0	
United - North Carolina	0	0	
United - Ohio	0	0	
United - Pennsylvania	0	0	
United - Indiana	0	0	
United - IM Tennessee	0	0	
Total	9,512	4,470	13,982

APPENDIX C

DISALLOWANCES FOR EXCESS DEFERRED TAXES
WHICH MAY BE SOUGHT PURSUANT TO SECTION 208

NAME	COMMON LINE DISALLOWANCE	TRAFFIC SENSITIVE DISALLOWANCE	SPECIAL ACCESS DISALLOWANCE	
Indiana Bell	916	0	434	
Michigan Bell	2,367	0	0	
Wisconsin Bell	828	675	0	
Centel - Florida	184	119	29	
Centel - Nevada	200	207	24	
Cincinnati Bell	760	0	0	
Contel - California	134	67	0	
Contel - New York	130	0	14	
Contel - Texas	147	47	0	
Contel - Virginia	116	73	0	
GTE North - Illinois	467	0	0	
GTE North - Indiana	772	0	0	
GTE North - Michigan	291	0	0	
GTE North - Ohio	543	0	0	
GTE North - Pennsylvania	244	0	0	
GTE North - Wisconsin	430	0	0	
GTE North - Iowa	107	0	0	
GTE North - Missouri	69	0	0	
GTE of the South - TOTAL	1,426	0	0	
GTE of the SW - TOTAL	1,326	927	0	
Hawaiian Telephone	579	846	152	
GTE - Florida	2,448	0	0	
New England - TOTAL	1,708	1,962	0	
United - Florida	0	0	0	
United - North Carolina	0	0	0	
United - Ohio	0	0	0	
United - Pennsylvania	0	0	0	
United - Indiana	0	0	0	
United - IM Tennessee	0	0	0	
Total	16,192	4,922	653	21,767

ICB RATES
AS OF APRIL 27, 1989
NEW YORK TELEPHONE COMPANY
PENDING AND EFFECTIVE CASES

New York Telephone currently has 65 ICB DS3 offerings in effect.

Also, as far as I am able to determine they do not have any High Capacity Circuits greater than DS3s either currently in effect or pending.

FOOTNOTES

[1] Annual 1988 Access Tariff Filings, CC Docket No. 88-1, Phase II, Memorandum Opinion and Order, FCC 88-420, released Dec. 27, 1988 (*December 27 Order), petition for review docketed sub nom.* Pacific Bell & Nevada Bell v. Federal Communications Comm'n, No. 89-1194 (D.C. Cir. Feb. 23, 1989).

[2] Annual 1988 Access Tariff Filings, CC Docket No. 88-1, Phase II, Order Designating Issues for Investigation, 3 FCC Rcd 3103 (1988) (*Phase II Designation Order).* In addition to the issues discussed in the instant Order, the *Phase II Designation Order* included issues concerning voice grade special access demand, New England Telephone and Telegraph Company's separations data, the entire annual access tariff filing of General Telephone of Florida, and Illinois Bell's television and radio services rates.

The Bureau initiated this investigation in Annual 1988 Access Tariff Filings, 3 FCC Rcd 1281 (1987) (*Annual 1988 Access Order).* Phase I of the investigation related to apparent inconsistencies in the local exchange carriers' special access cost and demand showings. 3 FCC Rcd at 1298, paras. 135-138. The Bureau gave the LECs whose rates were suspended the choice of either filing new, reduced proposed rates or justifying their proposed rates. *See* Annual 1988 Access Tariff Filings, CC Docket No. 88-1, Phase I, 3 FCC Rcd 507 (*Phase I Designation Order).* Only one of the LECs subject to suspension, GTOC, did not file reduced rates. In the *Phase I Order*, the Bureau lifted the suspensions, again with the exception of GTOC, whose suspension was lifted six weeks later. The Bureau also stated in the *Phase I Order* that it would address the cost and demand consistency issue on the merits with respect to all the LECs in Phase II of the investigation. Annual 1988 Access Tariff Filings, CC Docket No. 88-1, 3 FCC Rcd 2043 (1988) (*Phase I Order), on reconsideration*, 4 FCC Rcd 534 (1989) (*Phase I Reconsideration Order);* Annual 1988 Access Tariff Filings, GTE Telephone Operating Companies, CC Docket No. 88-1, Phase I, Part 2, DA 88-530, released Apr. 14, 1988 (*GTOC Suspension Order).* The consistency issue was, in fact, included in the *Phase II Designation Order*, 3 FCC Rcd at 3103-04, paras. 4-13.

[3] A list of filing parties in the present reconsideration phase of this proceeding appears as Appendix A to this Order; we will use herein the abbreviated party names listed in that Appendix.

[4] *Annual 1988 Access Order*, 3 FCC Rcd at 1316, paras. 298, 300. That order also required certain adjustments pursuant to Section 204(b) of the Act.

[5] Ameritech Petition at 5-6, 10-12; Bell Atlantic Petition at 2-6; BellSouth Petition at 6-10; Cincinnati Petition at 5-6; GTOC Petition at 14-17; Nevada Bell Petition at 11-15; NYNEX Petition at 2-3; Pacific Bell Petition at 3-5; SNET Petition at 8-9; SWB Petition at 3-10; US West Petition at 14-18.

[6] Ameritech Petition at 10-11; Bell Atlantic Petition at 4; GTOC Petition at 18-20; NYNEX Petition at 6-7; SNET Petition at 8; SWB Petition at 3-6. Petitioners cite *Arizona Grocery v. Atchison Topeka & Santa Fe Ry. Co.*, 284 U.S. 370 (1932); *Arkansas Louisiana Gas. Co. v. Hall*, 453 U.S. 571 (1981); *American Tel. & Tel. Co. v. F. C. C.*, 836 F.2d 1386 (D.C. Cir. 1988) (Starr, J. *concurring*, at 1393-96); *Sea Robin Pipeline Co. v. F. E. R. C.*, 795 F.2d 182 (D.C. Cir. 1986).

[7] Bell Atlantic Petition at 3; BellSouth Petition at 7; Cincinnati Petition at 7; Nevada Bell Petition at 11.

[8] Bell Atlantic Petition at 3; BellSouth Petition at 8; Cincinnati Petition at 7-9; GTOC Petition at 4; SWB Petition at 12-14.

[9] BellSouth Petition at 7; GTOC Petition at 17; Nevada Petition at 11; SWB Bell Petition at 3-4.

[10] Bell Atlantic Petition at 4-5; BellSouth Petition at 9; Cincinnati Petition at 10-11; Nevada Bell Petition at 14-15; Pacific Bell Petition at 7-8.

[11] *New England Tel. & Tel. Co. v. F. C. C.*, 826 F.2d 1101 (D.C. Cir. 1987), *rehearing denied*, No. 85-1087, slip op. (Oct. 2, 1988).

[12] Ameritech Petition at 11-12; Bell Atlantic Petition at 5-6; BellSouth Petition at 8-9; Cincinnati Petition at 8-11; GTOC Petition at 16-17; Nevada Bell Petition at 12-14; NYNEX Petition at 3; Pacific Bell Petition at 5-7; SNET Petition at 8-9; SWB Petition at 6-10.

[13] Annual 1985 Access Tariff Filings, CC Docket No. 86-125, Phase II, Memorandum Opinion and Order, FCC 89-130, released April 27, 1989 (*Terms and Conditions Reconsideration Order).*

[14] *See generally Trans Alaska Pipeline Rate Cases*, 436 U.S. 631 (1978).

[15] 47 C.F.R. § 208(b)(2).

[16] Ameritech Petition at 6-10; BellSouth Petition at 13-16; Cincinnati Petition at 11-12; GTOC Petition at 6-7; NYNEX Petition at 5-7; SWB Petition at 10-12.

[17] Ameritech Petition at 7; Cincinnati Petition at 12-13; NYNEX Petition at 4; SWB Petition at 10-11. In this connection, petitioners cite *American Tel. & Tel. Co. v. F. C. C.*, 836 F.2d 1386 (D.C. Cir. 1988) concerning systematic bias in the Commission's CC Docket No. 84-800 automatic refund mechanism.

[18] Ameritech Petition at 9-10; Bell Atlantic Petition at 6-8; BellSouth Petition at 20-23; Nevada Bell Petition at 4-5; NYNEX Petition at 4, 10-11, 20-21; SWB Petition at 18-19.

[19] Ameritech Petition at 4, 13-15; BellSouth Petition at 17-18; Southwestern Petition at 20-21.

[20] *See Phase II Designation Order*, 3 FCC Rcd at 3103, para. 2.

[21] *Id.* at 3103-04, paras. 4-11.

[22] *See* Sections III and V, *infra*. Petitioners' arguments regarding the 5 percent cutoff and the length of the periods used to derive actual data are rendered moot by these conclusions. Many of petitioners' arguments that we failed to explain adequately the rationale and method for our adjustments are, in effect, challenges to the comparison method which we have just discussed.

[23] *December 27 Order* at para. 273.

[24] BellSouth Petition at 16-17; Cincinnati Petition at 9-10; GTOC Petition at 5-7; NYNEX Petition at 3-5; Pacific Bell Petition at 8-13.

[25] 836 F.2d 1386 (D.C. Cir. 1988).

[26] *See Authorized Rates of Return for Interstate Services of AT&T Communications and Exchange Telephone Carriers*, 50 Fed. Reg. 41350 (Oct. 10, 1985), *recon.*, FCC 86-114, released Mar. 24, 1986.

[27] Cincinnati Petition at 13; GTOC Petition at 6-8; NYNEX Petition at 3-4; SNET Petition at 9.

[28] BellSouth Petition at 20-23; GTOC Petition at 9-10; Nevada Petition at 6-8; Pacific Bell Petition at 53-54; SNET Petition at 6-7; US West Petition at 18-20.

[29] *See* Detariffing the Installation and Maintenance of Inside Wiring, Second Report and Order, CC Docket No. 79-105, 51 Fed. Reg. 8,498 (Mar. 12, 1986) *(Detariffing Order), recon.*, 1 FCC Rcd 1190 (1986), *further recon.*, 3 FCC Rcd 1719 (1988), *petition for review docketed sub nom.* National Ass'n of Regulatory Util. Comm'ners v. F.C.C., No. 86-1687 (D.C. Cir. Dec. 11, 1986); Modifications to the Uniform System of Accounts for Class A and B Telephone Companies, 48 Fed. Reg. 50,534 (Nov. 2, 1983).

[30] *Phase II Designation Order*, 3 FCC Rcd at 3101, para. 2. The LECs are required to apportion their joint and common costs, including Account 6362 expense, between regulated and nonregulated activities. *See* Separation of Costs of Regulated Telephone Service from the Costs of Nonregulated Activities, CC Docket No. 86-111, 2 FCC Rcd 1298 *(Joint Cost Order), modified on recon.*, 2 FCC Rcd 6283 (1987), *appeal docketed sub nom.* Southwestern Bell Corp. v. F.C.C., No. 87-1764 (D.C. Cir. Dec. 14, 1987) and National Tel. Coop. Ass'n v. F.C.C., No. 87-1771 (D.C. Cir. Dec. 15, 1987), *petitions for further recon. pending.*

[31] Ameritech Petition at 19; BellSouth Petition at 18 n.47; GTOC Petition at Attachment B, p. 1; Nevada Petition at 5-6; NYNEX Petition at 10-12; Pacific Bell Petition at 17-19; SNET Petition at 3-4; SWB Petition at 19; US West Petition at 6.

[32] Nevada Bell Petition at 9-19; NYNEX Petition at 9; Pacific Bell Petition at 14-19, 43-45; SWB Petition at 15-18.

[33] Annual 1989 Access Tariff Filings, Memorandum Opinion and Order, DA 89-337 (released Mar. 22, 1989) *(Annual 1989 Access Order)*.

[34] For a complete background on the separations procedures applicable to local switching equipment, *see* Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, 2 FCC Rcd 2551, 2551-53 (1987) *(COE Recommended Decision and Order)*.

[35] For a complete background on circuit equipment, *see COE Recommended Decision and Order*, 2 FCC Rcd at 2552; Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, 2 FCC Rcd 6333 (1987) *(Further Order Inviting Comments)*.

[36] *See* 47 C.F.R. § 36.126.

[37] *See* note 2, *supra*.

[38] Tax Reform Act, Pub. L. No. 99-514, 100 Stat. 2085 (Oct. 22, 1986).

[39] *Annual 1988 Access Order*, 3 FCC Rcd at 1294, para. 107.

[40] *Phase II Designation Order*, 3 FCC Rcd at 3104, paras. 13-14.

[41] Western Union Motion for Immediate Establishment of an Expeditied Procedural Schedule for Review of the Phase I Direct Case of New York Telephone, filed Feb. 12, 1988 (Western Union Motion).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of

Revocation of Licenses of

JERRY E. GASTIL AND KAY M. GASTIL
Specialized Mobile Radio System
Station WNBF-495

JERRY E. GASTIL
Specialized Mobile Radio System
Station WNFL-371

and

Suspension of License of

JERRY E. GASTIL
General Class Radiotelephone
Operator License PG-11SD-2544

and

Revocation and Suspension of
Licenses of

JERRY E. GASTIL
Amateur Radio Station K6DYD
Amateur Extra Class Radio Operator
License

and

Revocation of Licenses of

JERRY E. GASTIL, Trustee
Amateur Club Stations
W6JAM and K6KQC

ORDER TO SHOW CAUSE AND SUSPENSION ORDER

Adopted: May 2, 1989; Released: May 9, 1989

By the Chief, Private Radio Bureau, and Chief, Field Operations Bureau:

1. In *United States v. Gastil*, No. 87-9433-G-Criminal (S.D. Cal. Feb. 22, 1988), Jerry E. Gastil pleaded guilty and was convicted of the offense of interference with Federal radio communications, in violation of 18 U.S.C. § 1362.[1] The conviction establishes, as *res judicata* in this proceeding, that Gastil willfully and maliciously caused interference to the radio communications of the Federal Bureau of Investigation between April 1 and 10, 1987, in violation of Sections 97.125 and 13.62 of the Commission's Rules, 47 C.F.R. §§ 97.125[2] and 13.62.[3] By this order we suspend Mr. Gastil's Amateur Extra Class and General Class Radiotelephone Operator licenses and direct him to show cause why his station licenses for Specialized Mobile Radio System (SMR) stations WNBF-495 and WNFL-371, Amateur station K6DYD and Amateur club stations W6JAM and K6KQC should not be revoked.

2. In view of his conviction, it appears that Gastil lacks the requisite character qualifications to be a Commission licensee in the private radio services or to hold an operator license. The Commission has said, "Malicious interference in any radio service is a very serious matter. It is the most serious violation found in the Amateur Radio Service, warranting the most stringent penalty." *Harold R. Claypoole*, 95 FCC 2d 331, 335 (1983). *See also James W. Smith*, 102 FCC 2d 258 (Rev. Bd. 1985); *Henry C. Armstrong, III*, 92 FCC 2d 485 (Rev. Bd. 1983); *Gary W. Kerr*, 91 FCC 2d 107 (Rev. Bd. 1982); and *Kenneth L. Gilbert*, 92 FCC 2d 126 (Rev. Bd. 1982). The cited cases involved amateur to amateur interference, often in a context of retaliation for perceived misdeeds. *A fortiori*, interference with communications of a law enforcement agency is more serious.

3. Gastil's conviction for interfering with U.S. Government radio communications is clearly relevant to evaluating the likelihood that he will comply with the Communications Act and the Commission's Rules as an operator or as a licensee in the land mobile and amateur radio services. *See Character Qualifications*, 102 FCC 2d 1179, 1183, *recon. denied*, 1 FCC Rcd 421, 424 (1986), and *TeleSTAR, Inc.*, 3 FCC Rcd 2860, 2866 (1988).[4]

4. Section 312(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. § 312(a)(2), gives the Commission authority to revoke station licenses for matters coming to its attention which would have prevented granting the original application. Section 312(a)(4) of the Act, 47 U.S.C. § 312(a)(4), gives the Commission authority to revoke station licenses for willful or repeated violation of the Act or rules. Section 303(m)(1)(A) of the Act, 47 U.S.C. § 303(m)(1)(A), gives the Commission authority to suspend a radio operator license for violation of the Act or rules. Section 303(m)(1)(E) of the Act, 47 U.S.C. § 303(m)(1)(E), gives the Commission authority to suspend radio operator licenses for willfully or maliciously interfering with any other radio communications or signals.

5. Gastil IS THEREFORE ORDERED, under Sections 312(a)(2) and (4) and 312(c) of the Communications Act, 47 U.S.C. §§ 312(a)(2) and (4) and 312(c), to show cause why the radio station licenses shown in the caption should not be revoked. If he wishes to present evidence at an evidentiary hearing before an Administrative Law Judge, he must request a hearing within 30 days from the date of release of this *Order*. A time, place, and Presiding Judge for the hearing will be designated later. If Gastil does not request a hearing, the Commission staff will determine, without a hearing, whether revocation is warranted and will consider any written statement he submits.

6. Additionally, the captioned operator licenses are hereby SUSPENDED, under Sections 303(m)(1)(A) and (E) of the Act, 47 U.S.C. §§ 303(m)(1)(A) and (E), for the remainder of their terms. If Gastil requests a hearing or submits a written statement concerning the suspension matters, the suspensions will be held in abeyance until

the case is decided. If he does not request a hearing or submit a written statement, the suspensions will take effect 30 days after his receipt of this *Order*.[5]

7. Based upon the above information, this case will be decided upon the following issues:

(a) To determine whether, in light of the above-mentioned conviction, Jerry E. Gastil is qualified to remain a Commission licensee.

(b) To determine whether any or all of the captioned radio station licenses should be revoked.

(c) To determine whether the operator license suspensions imposed by this *Order* should be affirmed, modified or dismissed.

8. The captioned proceedings involve substantially the same facts and issues and are therefore consolidated for hearing pursuant to Section 1.227 of the Commission's Rules, 47 C.F.R. § 1.227. *See also* 47 U.S.C. § 154(j).

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

Richard M. Smith
Chief, Field Operations Bureau

FOOTNOTES

[1] That statute provides, "Whoever willfully or maliciously interferes in any way with the working or use of any [United States Government communications system] . . . shall be fined not more than $10,000 or imprisoned not more than ten years, or both."

[2] Section 97.125 provides, "No licensed [amateur] radio operator shall willfully or maliciously interfere with or cause interference to any radio communication or signal."

[3] Section 13.62 provides, "No licensed commercial radio operator shall violate . . . any Act . . . which the Commission is authorized to administer, or any regulation made by the Commission under such Act . . . ."

[4] We note that Gastil has filed applications to assign SMR license WNFL-371 to Robert Lee Burchett, Jr., Amateur club station license W6JAM to Jerry A. Moseley, and Amateur club station license K6KQC to William K. Cheverton. These three assignment applications will be held in abeyance during the pendency of this proceeding to determine his qualifications to hold the subject radio licenses. *See Jefferson Radio Co. v. FCC*, 340 F.2d 781 (D.C. Cir. 1964).

[5] We will consider a request to terminate the suspension of Gastil's General Class Radiotelephone Operator license five years after the suspension becomes effective.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-432

In re Applications of

WELCH COMMUNICATIONS, INC.	File No. BPH-870827MY
NUNN CORPORATION	File No. BPH-870827NQ
SWAN CREEK COMMUNICATIONS	File No. BPH-870827NJ

For Construction Permit for a New
FM Station on Channel 297A
Swanton, Ohio

MEMORANDUM OPINION AND ORDER

Adopted: May 1, 1989; Released: May 9, 1989

By the Review Board: MARINO (Chairman), BLUMENTHAL, ESBENSEN. Chairman MARINO concurring with separate statement.

1. The Review Board has under consideration the "Appeal of Dismissal of Motion for Protective Order" filed on April 10, 1989 by Nunn Corporation ("Nunn") and the opposition thereto filed on April 26, 1989 by Welch Communications, Inc. ("Welch").[1]

2. The conflict before us stems from the addition of financial, misrepresentation, and abuse of process issues added against Nunn by the presiding ALJ in his *Memorandum Opinion and Order*, FCC 89M-467, released February 10, 1989. There, the ALJ found that although he had earlier ruled that the applicants in this case "may mask specific dollar amounts" of financial commitment letters,[2] a bank letter of August 27, 1987 from Huntington Banks to Nunn stated, in pertinent part, that "the desired loan amount will be approximately [balance of paragraph elided]." From all outward appearances, then, Nunn's submission would have seemed in standard compliance with the ALJ's indulgence regarding the specific dollar amount of any financial commitment.

3. However, a competing applicant here, Welch, obtained (apparently from the bank) a copy of the subject Huntington Banks letter, and it observed that not only had Nunn obscured the specific dollar amount, it had wholly elided the sentence which followed, to wit: "This letter, however, is not a commitment and is not contractually binding on the bank." FCC 89M-467, *supra*, at para. 9. Given these circumstances, the ALJ enlarged the issues in the case as indicated above. *Id.*, at para. 10.

4. Nunn's defense to its total elision of the above-quoted sentence was as follows:

> The merits concern whether Nunn was deliberately attempting to hide negative language in a bank letter by masking it notwithstanding a request for the language in a document production request. Nunn contends that the language was lawfully masked because the document production request did not require production of the entire bank letter. The decision to mask the language was made during a telephone call between Irving Nunn and David Honig during which they reviewed the bank letter in light of the *Prehearing Order*, [FCC 88M-3306, released October 5, 1988], and the opposing parties' document production requests.

Appeal at 3 n.5. Apparently because the misrepresentation and abuse of process issues added against Nunn ineluctably require a judgment on Nunn's intent,[3] and inasmuch as reliance on counsel is occasionally viewed as either mitigating or wholly exculpating, *see, e.g.*, *WEBR v. FCC*, 420 F.2d 158, 167-168 (D.C. Cir. 1969); *Asheboro Broadcasting Co.*, 20 FCC 2d 1 (1969); *Lorain Community Broadcasting Co.*, 18 FCC 2d 686 (1969); *WADECO, Inc. v. FCC*, *supra* note 3, 628 F.2d at 131-133 (dissent); *cf. Broadcast Associates of Colorado*, *supra* note 3, 104 FCC 2d at 19,[4] Nunn's two competitors here, Welch and Swan Creek, sought to depose Nunn's counsel, David Honig.[5] On March 30, 1989, admittedly two days late of the prescribed filing deadline,[6] Nunn filed with the presiding ALJ a motion for a protective order asserting attorney-client privilege. Moreover, and importantly, Nunn's motion claimed that the potential deposition of its attorney, Honig, was superfluous because[7]:

> Mr. Nunn specifically manifested his willingness to waive the attorney-client privilege "to the extent that I am willing to set forth the discussion [Mr. Honig and I] had concerning the Huntington Banks letter."

5. On April 5, 1989, the ALJ simply dismissed Nunn's motion as untimely, and he noted his issuance of a subpoena against Honig "on the morning of March 30, 1989, a *subpoena* that will insure Mr. Honig's presence at his April 11, 1989 deposition." *Order*, FCC 89M-1082, released April 5, 1989. This appeal by Nunn followed.[8]

APPEAL

6. One of the few bases for entertaining an appeal of an interlocutory ruling by an ALJ is a claim of privilege to the adduction of evidence. 47 CFR § 1.301(a)(2); *WWOR - TV, Inc.*, FCC 89R-14, released March 24, 1989 (Rev. Bd.); *Tri - State Community Development and Communications Corp.*, FCC 89R-10, released March 17, 1989 (Rev. Bd.); *LNJ Communications*, 3 FCC Rcd 2745 (Rev. Bd. 1988); *Metroplex Communications, Inc. (WHYI - FM)*, 2 FCC Rcd 4513 (Rev. Bd. 1987); *Opal Chadwell*, 59 RR 2d 1115 (Rev. Bd. 1986). *See also RKO General, Inc. (KHJ - TV)*, 97 FCC 2d 423 (1984) (Comm'n). The familiar reason for the Commission's privilege exemption to the general bar against the appeal of interlocutory rulings was summarized succinctly by Judge Skelly Wright in *In re Sealed Case*, 676 F.2d 793, 806 (D.C. Cir. 1982) (footnote omitted), where the jurist prologized that "[e]ach of the

recognized privileges protects a substantial individual interest or relationship in which society has an interest, at the expense of the public interest in the search for truth."

7. Despite the immutable tension between the truth-seeking *raison d'etre* of legal tribunals, on the one hand, and the special privilege to withhold a little truth, on the other hand, *see, e.g., In re Grand Jury Proceedings*, 727 F.2d 1352, 1355 (4th Cir. 1984) (and cited authorities), nowhere is the law tilted more sharply toward privilege than in the attorney-client relationship. As Nunn aptly notes, the Supreme Court has duly honored the historic attorney-client privilege and declared that, in the main, "[n]ot even the most liberal of discovery theories can justify unwarranted inquiries into the files and the mental impressions of an attorney." *Hickman v. Taylor*, 329 U.S. 495, 509 (1947). Further, the federal rules of evidence (Rule 501) and procedure (Rule 26), under which Commission proceedings are generally conducted (*see* 47 CFR § 1.351), have effectively incorporated the *Hickman v. Taylor* guidelines on privilege. *Sealed Case*, *supra*, 676 F.2d at 808 n.49; *see also WWOR - TV, Inc.*, *supra*. This venerable deference to the attorney-client privilege (two privileges, actually: (1) attorney-client communications; (2) work-product) is evidenced constantly by this Commission, as in *RKO General, Inc. (KHJ - TV)*, *supra*, where it echoed:

> As stated by the Court, the purpose of the attorney-client privilege "is to encourage full and frank communications between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice. The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client."

97 FCC 2d at 427 (quoting *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981)).

8. Asserting here a privilege based upon a direct attorney-client communication (*i.e.*, no "work-product" privilege is claimed), Nunn seeks to avoid the deposition testimony of his attorney, Honig, on two apparently interrelated grounds. First, Nunn asserts that inasmuch as *he* is willing to discuss and describe his conversation with Honig anent the elision of the subject sentence in the Huntington Banks letter, deposition discovery of Honig is utterly unnecessary (invoking *Hickman v. Taylor*, *supra*, 329 U.S. at 509) ("the essence of what petitioner seeks either has been revealed to him already through the interrogatories or is readily available to him directly from the witnesses for the asking").[9] Second, and in any event, Nunn contends that his "conversation [with Honig] is absolutely protected by the attorney-client privilege,"[10] because the communication meets the four criteria explicated in *U. S. v. United Shoe Machinery Corp.*, 89 F. Supp. 357, 358-359 (D. Mass. 1950), *viz.* :

> (1) the asserted holder of the privilege is or sought to become a client;
>
> (2) the person to whom the communication was made (a) is a member of the bar of a court, or his subordinate and (b) in connection with this communication is acting as a lawyer;
>
> (3) the communication relates to a fact of which the attorney was informed (a) by this client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion of law or (ii) legal service or (iii) assistance in some legal proceeding, and not (d) for the purpose of committing a crime or tort; and
>
> (4) the privilege has been (a) claimed and (b) not waived by the client.

9. We have said that Nunn's first defense is "interrelated" to his privilege claim as he contends that, because he has waived his privilege insofar as deposing on the circumstances behind the sentence elision, discovery of his attorney is therefore unnecessary. It is unremarkable that the law disfavors "unnecessary" discovery. However, the Commission's discovery rules provide that "[p]ersons or parties may be examined regarding any matter, not privileged, which is relevant to the hearing issues . . . ." 47 CFR § 1.311(b). Nunn does not deny, of course, that Honig's testimony would be "relevant" to the hearing issues added by the ALJ, particularly in view of Nunn's assertion that "[t]he decision to mask the [bank letter] language was made during a telephone call between Irving Nunn and David Honig during which they reviewed the bank letter . . . ." (*see supra* para. 4). This first defense, then, devolves down solely to the question of whether -- irrespective of the relevancy of Honig's information -- his deposition testimony should be protected as privileged.

10. As stoutly as the law protects the attorney-client privilege, Judge Wright's exegesis in *Sealed Case* reminds that:

> even though privileges usually provide categorical protection, two common law doctrines give courts a limited ability to make sure that privileges do not serve ends for which they were not intended. These doctrines are *exception* and *implied waiver*. Exception comes into play when a privileged relationship is used to further a crime, fraud, or other fundamental misconduct.
>
> * * *
>
> Implied waiver deals with an abuse of a privilege itself rather than of a privileged relationship. Where society has subordinated its interest in the search for truth in favor of allowing certain information to remain confidential, it need not allow that confidentiality to be used as a tool for manipulation of the truth-seeking process.

676 F.2d at 807. Both doctrines are at play in the instant case. Whereas Nunn has waived his privilege "to the extent that I am willing to set forth the discussion [Mr. Honig and I] had concerning the Huntington Banks letter" (*see supra* para 4.), it cites *RKO General, Inc. (KHJ - TV)*, *supra*, for the proposition that Nunn's waiver was merely "partial," and that Nunn desires to maintain his privilege to the degree indicated.[11] But *RKO* is, in pertinent part, a "work product" case (as is *Opal Chadwell*, *supra)*, not an attorney-client communication case, and the *Sealed Case* court has observed that:

> [t]he purposes of the *work product privilege* are more complex, and they *are not inconsistent* with *selective disclosure* –even in some circumstances to an adversary.

676 F.2d at 818 (emphases added). Thus, the *RKO* Commission, following the precepts of *Sealed Case*, held that the attorney there might engage in "selective disclosure." *See* 97 FCC 2d at 431.

11. Yet, as Judge Wright further explained in *Sealed Case* :

> The implied waiver doctrine has been more fully developed, however, in the context of the attorney-client privilege. *Any disclosure inconsistent with maintaining the confidential nature of the attorney - client relationship waives the privilege. When a party reveals part of a privileged communication in order to gain an advantage in litigation, it waives the privilege as to all other communications relating to the same subject matter because "the privilege of secret consultation is intended only as an incidental means of defense and not as an independent means of attack, and to use it in the latter character is to abandon it in the former."*

676 F.2d at 818 (emphasis added; footnotes omitted). Judge Wright had earlier quoted Dean Wigmore's classic insight into waiver of the attorney-client privilege:

> [R]egard must be had to the double elements that are predicated in every waiver, *i.e.*, not only the element of implied intention, but also the element of fairness and consistency. A privileged person would seldom be found to waive, if his intention not to abandon could alone control the situation. *There is always also the objective consideration that when his conduct touches a certain point of disclosure, fairness requires that his privilege shall cease whether he intended that result or not. He cannot be allowed, after disclosing as much as he pleases, to withhold the remainder.*

Id., at 807 (emphasis added; footnote omitted) (quoting 8 J. Wigmore, Evidence in Trials at Common Law § 2327 at 636 (J. McNaughton re. 1961)). *See also Grand Jury, supra,* 727 F.2d at 1357; *U.S. v. El Paso Co.,* 682 F.2d 530, 539 (5th Cir. 1982). Here, it is patent that Nunn seeks to effect precisely what the law proscribes: to disclose "as much as he pleases" about his consultation with Honig, and "to withhold the remainder." This tactic will be spurned, and we find that Nunn has waived the attorney-client privilege over the pertinent conversation with Honig. *See generally also U.S. v. AT&T,* 642 F.2d 1285, 1299 (D.C. Cir. 1980). Having found that Nunn has waived its privilege in this regard, and may not protect against Honig's scheduled deposition on that ground, we need not resolve the question of whether the doctrine of "exception" would furnish an additional count for disregarding the claimed attorney-client privilege.[12]

12. Finally, although Nunn's appeal to the Board makes no mention, its underlying motion for protective order to the ALJ had complained that Honig's deposition would require his withdrawal as Nunn's counsel under Canon 5 of the Code of Professional Responsibility, and DR5-102.[13] This may be so, *see Dorothy J. Owens,* 104 FCC 2d 848 (Rev. Bd. 1986), *review denied,* 1 FCC Rcd 38 (1987), *appeal dismissed sub nom. Law Offices of Seymour M. Chase, P.C. v. FCC,* 843 F.2d 517 (D.C. Cir. 1988), and counsel is monished to consider carefully the ethical ramifications of further representational appearances. We note from the instant appeal, however, that Nunn is represented here by a second attorney,[14] which is customary when original counsel becomes a witness in that same proceeding. *See, e.g., 62 Broadcasting, Inc.,* FCC 89R-4, released February 16, 1989 (at paras. 5-19); *Opal Chadwell,* 2 FCC Rcd 5502, 5505-5508 (Rev. Bd. 1987) (subsequent history omitted). We do not here rule, though, on the question of Honig's possible disqualification; that is a matter not directly before us, and is in any event a matter initially for Honig's professional contemplation.

13. In view of all of the foregoing, we reject Nunn's claim of privilege, finding that he has waived it in connection with the Huntington Banks letter. *See also supra* note 12. To the extent that an applicant seeks to avoid the onus of its own actions by invoking the actions of its attorney, it must be cautious lest its privilege vanish, *Clark v. U.S., supra.* And attorneys who wish to avoid the witness chair should take care that the *"esquire"* honorific they carry be deployed as the shield it implies, and not as a client's double-edged sword. As here, that sword may cut both ways.

14. ACCORDINGLY, IT IS ORDERED, That the "Appeal of Dismissal of Motion for Protective Order," filed on April 10, 1989, by Nunn Corporation IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

FOOTNOTES

[1] By letter of April 21, 1989, the Board granted Welch's motion for extension of time, thereby permitting Welch to file its opposition on April 26, 1989. The parties have also informally agreed not to schedule Honig's deposition until the Board has ruled on Nunn's appeal.

[2] *See Memorandum Opinion and Order,* FCC 88M-3306, released October 5, 1988 (ALJ).

[3] The Commission has long held that an intent to deceive is a prerequisite to disqualification on misrepresentation and kindred issues. *See Catoctin Broadcasting Corp. of New York,* 2 FCC Rcd 2126, 2137-2138 (Rev. Bd. 1987), *affirmed on review,* FCC 89-74, released March 24, 1989; *Old Time Religion Hour, Inc.,* 95 FCC 2d 713, 723 (Rev. Bd. 1983), *review denied,* 57 RR 2d 1147 (1985); *Fox River Broadcasting, Inc.,* 88 FCC 2d 1132, 1137 (Rev. Bd. 1982), *modified on review,* 93 FCC 2d 127 (1983). The matter of Nunn's intent is critical these days, for although the Commission in the past might have assigned a comparative "demerit" for improper submissions mitigated by ambient circumstances, *see WADECO, Inc. v. FCC,* 628 F.2d 122, 133 (D.C. Cir. 1980) (dissent of Mikva, J.), only intentional mispresentations warranting complete disqualification are cur-

rently cognizable in FCC adjucatory proceedings. *Broadcast Associates of Colorado,* 104 FCC 2d 16, 18-19 & nn. 4, 5 (1986) *(citing Character Policy Statement,* 102 FCC 2d 1179, 1230-1232 (1986)).

[4] *But compare RKO General, Inc. v. FCC,* 670 F.2d 215, 231 (D.C. Cir. 1981) (reliance on advice of counsel no excuse); *see also Folkways Broadcasting Co., Inc.,* 48 FCC 2d 723, 732 (Rev. Bd. 1974), *review denied,* FCC 75-1017, released September 9, 1985; *cf. WADECO, Inc. v. FCC, supra* note 3, 628 F.2d at 128-129 (majority opinion).

[5] Joint Notice of Deposition Upon Oral Examination, filed March 21, 1989.

[6] *See Appeal* at 1 & n.1, 2 & n.4.

[7] Motion For Protective Order, filed March 30, 1989, at 4 (footnote omitted).

[8] Nunn concedes that its Motion For Protective Order, above, to the ALJ was 2 days late, but it cites numerous Commission cases for the proposition that lateness will be forgiven (assuming no pattern of disruption or delay) where important questions of substance are involved. Appeal at 2 n.4. The Board, too, has observed that "when the Commission applies its procedural rules strictly it must remain mindful of the underlying purposes of those rules to ensure that rigidity does not override those purposes, justice, or equity." *Son Broadcasting, Inc.,* 92 FCC 2d 450, 452 (Rev. Bd. 1982). Even the court, while rebuking counsel for late filings, will often refrain from dismissing a pleading and will address the merits. *HBZ Communications, Inc. v. FCC,* 825 F.2d 516, 518 (D.C. Cir. 1987); *Community Coalition For Media Change v. FCC,* 646 F.2d 613, 616 (D.C. Cir. 1980) (rebuking appellant and FCC for untimely filings, but refraining from dismissal). Here, the hearing is not scheduled to commence until September 20, 1989 (Appeal at 2 n.4), and the ALJ's abrupt dismissal of a claim of privilege seems rather an overreaction in the face of a substantive question which has obvious public interest overtones. It also requires the Board to address immediately the merits, which in the initial instance should be heard by the ALJ. *See LNJ Communications,* 3 FCC Rcd 4411 (Rev. Bd. 1988) (privilege claims should first be addressed to, and by, presiding ALJ).

[9] Appeal at 4-5 & n. 9.

[10] *Id.,* at 3.

[11] Motion for Protective Order, *supra* note 7, at 4 & n. 6.

[12] The doctrine of "exception" is triggered, the court has stated, "when a privileged relationship is used to further a *crime, fraud or other fundamental misconduct." Sealed Case,* 676 F.2d at 807. (emphasis added). As Judge Wright notes therein, the lead case on "exception" is *Clark v. U.S.,* 289 U.S. 1 (1933). There, Justice Cardozo emphasized that a mere allegation of fraud or misconduct is in modern times insufficient to breach the privileged relationship and permit discovery of the attorney. Rather, the Justice expounded *(id.,* at 16; emphasis added):

> There is a privilege protecting communications between attorney and client. The privilege takes flight if the relation is abused. *A client who consults an attorney for advice that will serve him in the commission of a fraud will have no help from the law.* He must let the truth be told. There are early cases apparently to the effect that a mere charge of illegality, not supported by any evidence, will set the confidence free. *See, e.g., Reynell v. Sprye,* 10 Beav. 51, 54, 11 Beav 618; in *re Postlewaite,* 35 Ch. D. 722, 724; cf. *Regina v. Bollivant,* (1900) 2 Q.B.D. 163, (1901) A.C. 196. But this conception of the privilege is without support in later rulings.
>
> "It is obvious that it would be absurd to say that the privilege could be got rid of merely by making a charge of fraud." *O'Rourke v. Darbishire,* (1920) A.C. 581, 604. To drive the privilege away, there must be "something to give colour to the charge"; there must be *"prima facie* evidence that it has some foundation in fact." *O'Rourke v. Darbishire, loc. cit., supra.* . . . When that evidence is supplied, the seal of secrecy is broken.

Here, the addition of the misrepresentation and abuse of process issues certainly appear "to give color to the charge," for no hearing issue is added unless it is affirmatively shown that substantial and material questions of fact have been raised to support the charge. *See San Joaquin Television Improvement Corp.,* 2 FCC Rcd 7004, 7005-7008 (1987); *Grand Radio, Inc.,* 99 FCC 2d 596, 598 (Rev. Bd. 1984); *Folkways Broadcasting Co., Inc.,* 27 FCC 2d 619, 619-621 (Rev. Bd. 1971); *see generally* 47 U.S.C. § 309(d)(2), (e). Indeed, once it has been determined that "substantial and material" factual questions sufficient to warrant an evidentiary hearing surround an issue, we are quite beyond the *prima facie* case suggested by Justice Cardozo in *Clark v. U.S. See Citizens for Jazz on WRVR, Inc. v. FCC,* 775 F.2d 392, 397 (D.C. Cir. 1985).

As we have said in the text, we do not reach the question of whether the doctrine of "exception" obtains on the facts here presented. But for the fact that we have found that Nunn has waived his privilege on the pertinent conversation with counsel, the situation before us would compel a disposition on the "exception" doctrine, which -- at a minimum -- seems implicated by the attendant circumstances.

[13] *See Motion, supra* note 7, at 5-6. *But see Miller Broadcasting, Inc.,* 98 FCC 2d 725 (Rev. Bd. 1984) (Board finds attorney-witness not automatically disqualified under the specific facts therein, but must step down if actual conflict appears).

[14] *See* Appeal at 5 (indicating additional representation of Thomas A. Hart, Esquire, an experienced communications law practitioner).

SEPARATE STATEMENT OF BOARD CHAIRMAN MARINO

Taken in isolation the ALJ's dismissal of Nunn's motion for protective order which had been filed 2 days late does appear "abrupt." *See* Board's Order at note 8. Opposing counsel points out that "Nunn's untimeliness is not an isolated occurence; [its counsel] has established in the Swanton proceeding a habit of late filing which is invariably accompanied by tales of office moves and case load." Welch Communications' Opposition to Appeal, at 6. Moreover, Nunn's own motion to the ALJ facially established, at page 4, that the client in fact had already waived the privilege. Thus, the presiding ALJ was well within the broad discretion delegated by the Commission when he dismissed Nunn's *late,* if not frivolous, motion for protective order. *See, e.g., Albert E. Gary,* FCC 89R-28, adopted April 28, 1989.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 89-79

In the Matter of

Amendments of Part 69
of the Commission's Rules
Relating to the Creation of
Access Charge Subelements for
Open Network Architecture

NOTICE OF PROPOSED RULE MAKING

Adopted: March 30, 1989; Released: May 9, 1989

By the Commission: Commissioner Dennis issuing a statement at a later date.

I. INTRODUCTION

1. As announced in the *BOC ONA Order*,[1] we initiate this Rule Making to consider how best to integrate our Open Network Architecture (ONA) tariffing policies into the existing federal access charge rules.[2] We seek comment on modifications necessary to our access charge structure to accommodate the unbundled basic service elements (BSEs) and basic serving arrangements (BSAs) described in the ONA plans of the Bell Operating Companies (BOCs), as modified in the *BOC ONA Order*. We tentatively conclude that the BOCs should offer BSEs as unbundled rate subelements within our existing access elements. We do not believe that major modifications to our existing access rules will be necessary to implement such unbundling. We tentatively conclude, however, that certain modifications are necessary for the Local Switching element, since many BSEs are switch-related, and we request comment on the other elements that may be affected. Given the existing constraints on carriers' overall return that apply to Local Switching, we further tentatively conclude that BOCs should be able to unbundle BSEs flexibly within that element. We seek comment on several alternatives that would permit such a result. We also propose to extend this treatment generally to other rate subelements that we either require or permit local exchange carriers (LECs) to offer on an unbundled basis.[3] We tentatively conclude that because BSAs are quite similar to existing access arrangements, such as switched access feature groups and various forms of special access, BSAs should be tariffed according to existing rules.

2. We also tentatively conclude that the present enhanced service provider (ESP)[4] exemption should be retained, since it ensures a measure of stability in this time of rapid change for the enhanced service industry. Compared to alternative approaches, the present exemption provides substantial benefits to ESPs while not imposing new burdens on other ratepayers or disruption of state policies. Nevertheless, we invite comment on possible alternatives to the present exemption.

3. Finally, given the BOCs' ONA proposals and the tariffing principles of the *BOC ONA Order*, we reassess whether the specific pricing requirements established in *Computer III*[5] are necessary for ONA services. We tentatively conclude that these requirements are no longer necessary and should be eliminated.

II. BACKGROUND

4. Our decision in the *Computer III* proceeding replaced the structural separation requirements for BOC enhanced service operations with nonstructural safeguards designed to promote efficiency and competition, while preventing discrimination by these carriers, in the enhanced services marketplace. We required the BOCs to file ONA plans by February 1, 1988, describing generally their compliance with these nonstructural safeguards and, specifically, their proposals for initial sets of basic ONA services that ESPs could use on an unbundled, equal access basis. The *Phase I Order* concluded that such unbundling of basic service "building blocks" is essential to give the BOCs' enhanced service competitors an opportunity to design offerings that use network services in a flexible and economical manner.[6]

5. The *BOC ONA Order* accepted the BOCs' ONA plans in part and rejected them in part. That order did not remove generally the separate subsidiary requirements for the BOCs' enhanced service operations. We specified a number of amendments that each BOC must make to its ONA plan by May 19, 1989.

6. Recognizing the "inefficiencies that may occur from unnecessarily unbundled or splintered services," the *Phase I Order* required the BOCs to make available their initial sets of unbundled ONA services based on three criteria: (1) expected market demand, (2) utility to ESP competitors, and (3) technical and costing feasibility.[7] The BOCs applied these criteria in developing their proposed lists of unbundled ONA services. The ONA plans use a "common ONA model" to describe these ONA services,[8] consisting of BSAs, BSEs, Complementary Network Services (CNSs) and Ancillary Network Services (ANSs). As we clarified in the *BOC ONA Order*, BSAs are the fundamental tariffed switching and transmission services that an ESP must obtain to communicate with its customers through the BOC network. BSEs are optional unbundled features, generally associated with a BSA, that an ESP may require or find useful in configuring an enhanced service. For example, a BSA might be a trunk-side access arrangement, while a BSE might be automatic number identification (ANI).[9] The *BOC ONA Order* treats BSAs and BSEs the same for purposes of the *Computer III* safeguards.[10] In addition, the *BOC ONA Order* defines a CNS as a state-tariffed ONA service, associated with end users' rather than ESPs' access arrangements, that a BOC offers to end users regardless of whether users are customers of ESPs.[11] Call forwarding on an end user's line is an example of a CNS. Finally, the *BOC ONA Order* notes that the BOC plans describe as ANSs a number of services, such as billing services, not otherwise classified as BSEs, BSAs, or CNSs. To eliminate confusion about the scope of this category, we held that only unregulated services should be included in the ANS category.

III. UNBUNDLING OF BSES

A. *The BOC ONA Order*

7. The *BOC ONA Order* requires the BOCs to offer BSAs and BSEs in the federal tariffs for interstate access services.[12] Because of their close technical similarity to BSAs, the *BOC ONA Order* treats the Feature Groups and other interstate access arrangements now tariffed under our federal access rules as "interstate BSAs."[13] The Order also defines interstate BSEs as all basic services presented in the ONA plans that satisfy our "ONA unbundling criteria."[14] However, we did not require that CNSs be federally tariffed.[15] Thus, functions such as call forwarding, call waiting, and other Custom Calling features, when provided to end users on ordinary subscriber access lines, will remain tariffed at the state level.

8. The *BOC ONA Order* stated that a separate proceeding would be initiated to determine how our Part 69 access charge rules should be amended to accommodate the federal tariffing of interstate BSAs and BSEs. These rules provide an overall rate structure for interstate access services, prescribing both the allocation and recovery of the costs of local exchange facilities used to originate or terminate interstate traffic. Thus, most LEC costs that have been assigned to the interstate jurisdiction pursuant to the separations process[16] are allocated among the various access categories and are recovered through rates, filed in interstate tariffs, that have been developed in accordance with the standards of Part 69. For switched access services, our rules establish separate components or rate elements --principally, common line, local switching, and transport.[17] For special access, Part 69 simply establishes a single special access rate element, without any further disaggregation into components or other elements for cost allocation or rate structure purposes.[18] The *BOC ONA Order* stated that we would initiate this proceeding to consider a number of issues related to the federal tariffing of ONA services, including what access rate elements, if any, require unbundling to accommodate interstate BSEs; what degree of unbundling should take place; what, if any, changes in the Part 69 apportionment of investment and expense are needed; and how BSE rates and costs should be formulated.[19] To do this, we address first the types of services affected by this proceeding. Second, we consider the appropriate costing and pricing policies that should apply to these unbundled services, as well as certain implementation questions.

B. *Scope of Unbundling*

9. As noted above, the BOCs applied our ONA unbundling criteria in proposing their initial sets of BSEs. The *BOC ONA Order* approved these initial offerings as good first steps in complying with our ONA mandate, but required the BOCs to identify in their amended ONA plans additional BSEs they could offer, both immediately and over the next three years. We also held that all BSEs included in a BOC's ONA plan -- which, by definition, the BOC has found to satisfy the ONA unbundling criteria -- should be offered in the interstate access tariffs on an unbundled basis.

10. The *BOC ONA Order* notes that BSEs, which for the most part are software functions, generally reside in the stored-program-controlled switch located in a BOC's end office.[20] Thus, BSEs generally appear to be part of the local switching function,[21] and, under the current Part 69 rules would be included in the local switching access element.[22] Accordingly, we tentatively conclude that we should amend the pertinent Part 69 rules for the local switching element to permit BSE unbundling. The BOCs have also designed BSEs for special access-type BSAs that apparently are associated with investment allocated to the special access element.[23] However, our rules already permit the offering of special access subelements and thus it appears that unbundled BSEs associated with special access BSAs may be offered without further rule amendment.[24] Finally, BSEs like multiplexing[25] and BSEs associated with packet services[26] are not strictly local switching functions. We request comment on any access elements that must be unbundled to integrate such BSEs into the access tariffs. Parties claiming that specific access elements should be unbundled to accommodate certain BSE subelements should specify the relevant BSEs and corresponding access elements.

11. The *BOC ONA Order* states that because of their technical similarity to BSAs, we could classify existing interstate access arrangements as BSAs.[27] We seek comment on that conclusion, and specifically, on whether it applies to packet switching.

C. *Rate Level and Rate Structure Issues*

1. *Rate Level Constraints*

12. Our access charge rules provide a detailed set of cost allocation standards for LEC investment and expenses that define a revenue requirement for each access rate element. In computing each of these revenue requirements, LECs include a return on the investment assigned to the particular access element at the authorized rate of return prescribed by the Commission.[28] Thus, in developing rates for each access rate element, LECs are constrained to earn no more than the authorized rate of return.[29] All LECs that are not "small telephone companies"[30] and that file their own tariffs[31] now file annual Tariff Review Plans (TRPs)[32] that forecast (and target) their access revenues on an element-by-element basis. LECs must provide cost support and justification for any revisions to rates pursuant to Section 61.38 of this Commission's Rules.[33] Thus, the current access charge rules and tariff filing procedures are designed to provide a detailed structure for, and permit intensive review of, access costs and rates at the element level.

13. One possible regulatory approach to BSE ratemaking would be to apply to BSE subelements a set of constraints analogous to those now applied at the access element level. Conceivably, an allocation factor could be devised that would apportion the appropriate direct and indirect investment and expenses to each individual subelement; furthermore, the revenue requirement associated with each subelement could be targeted to the authorized rate of return. However, we are concerned that the costs of applying such a rigid, narrowly tailored methodology may not be justified in light of the number of subelements involved and the revenues to be derived from each.

14. Based on ESP requests and the BOC ONA plans thus far submitted, it appears that there will be a large number of BSEs -- eventually more than 100 -- that will require the offering of the same number of unbundled subelements in our access tariffs. Furthermore, it is likely that, in many cases, BSEs will involve relatively minor costs per individual feature, particularly compared with the costs for each access element as a whole. It appears

doubtful that these services justify the expense to the BOCs, and ultimately to ratepayers, required to devise, apply, and monitor a costing approach that is individually targeted to each of these subelements. Moreover, while our present rules build on accounts and separations cost categories to develop element-specific revenue requirements, there are no provisions in our current accounting and separations rules that would form the basis for developing similar subelement revenue requirements.[34] Thus, it is not clear that, even if we wished to extend the detailed costing rules in Part 69 down to the subelement level, it would be feasible to do so or that the results would be economically meaningful. Moreover, given differences among the BOCs in the number and types of BSEs they plan to offer,[35] we seek to avoid the application of rigid rules that may tend to stifle incentives to add new BSEs or that may have little relation to the manner in which the BOCs can offer such services most efficiently. Furthermore, we question whether an allocation factor could be devised that would apportion the costs of numerous and varied BSEs in a manner that produces rational results.

15. Interested persons may, however, comment on the feasibility of devising an allocation methodology that would permit us to target separately each BSE to the authorized rate of return. Persons who advocate such a rule should discuss how such targeting would yield realistic rates and whether the costs of such a system to carriers, and ultimately to ratepayers, would outweigh the benefits of such an approach. Because many switched BSE costs appear to involve software used in the switch, we seek comment on whether software-related measurement factors, such as program store words[36] or milliseconds of processing time, might be appropriate allocators of local switching investment and expense, or whether another unit of measurement might be suitable for allocating hardware, software, and other costs among subelements associated with local switching and other access elements.

16. Based on the concerns stated above,[37] we tentatively conclude that we should permit a more flexible approach to the pricing of BSE subelements. We wish, however, to avoid a system that, as the result of either overly rigid regulatory control or excessive carrier flexibility, leads to uneconomically high rates for BSEs, which may stifle development of new enhanced services, or allow unjustifiably low rates, which may cause "basic switching"[38] customers to subsidize new ONA services. We have, of course, broad discretion in selecting among alternative ratemaking methodologies.[39] Any alternative we adopt must comport with the statutory standard that rates "be just and reasonable".[40] Rates falling within the zone must simply be the product of a "reasonable balancing" between the "investor interest in maintaining financial integrity and access to capital markets and the consumer interest in being charged non-exploitative rates."[41] As stated above,[42] we expect that the costs associated with BSEs will be relatively small, compared to those incurred by basic switching services. We also consider that increasing regulatory requirements for BSEs might result in a counterproductive increase in these rates by increasing administrative costs disproportionately to other costs. We expect the additional flexibility we afford carriers to give them additional incentives to offer new BSEs.[43] We seek comment on four possible ways to implement our objective to afford carriers such additional flexiblity.

17. First, we might continue to adhere to element-level constraints on return, while permitting some pricing flexibility for BSEs tariffed at the subelement level. For example, rather than require that LECs generate numerous BSE subelement rates, each subject to rate-of-return constraints, we would continue to require that the local switching element as a whole remain targeted to the rate of return, but permit carriers flexibility beneath that level with respect to individual prices of BSEs.[44] Such an approach appears to balance the need for regulatory scrutiny of BOC returns on their basic services, which would continue to be strictly controlled at the element-level (as they are today), with the flexibility needed to offer numerous ONA services in a cost-effective and responsive manner.[45] Under this alternative, existing element-level rate-of-return constraints would ensure that carrier profits for the entire "service package", *i.e.*, consisting of basic switching and BSEs, remain within the zone of reasonableness.[46]

18. However, we also wish to design an approach to rate-level issues for BSEs that adequately addresses the potential for possible discriminatory pricing of services that the BOCs' enhanced service competitors may use. The BOCs will probably use some BSEs for their own enhanced service operations, but not others. This creates the possibility, under the first alternative approach described above, that the BOCs could set relatively low rates for the BSEs that they use, while pricing those that they do not need at relatively high rates.[47] Accordingly, we wish to explore other possible approaches to pricing flexiblity that could address more directly our concerns about such differential pricing, as well as the general concerns expressed above.

19. As a second alternative, we could adopt rules analogous to those applicable to special access rates. Section 69.113 not only imposes element-level rate-of-return constraints, but also requires that subelement rates "reflect cost differences among subelements in a manner that complies with applicable Commission rules or decisions."[48] Our recent *Strategic Pricing Order* [49] established a "cost crossover point", or point at which the costs for a set of individual voice grade lines equal the cost of one HiCap line,[50] to calculate a range within which we would presume the relationship of HiCap to voice grade rates to be reasonable. LECs proposing rates that fall outside that range must justify the rates pursuant to the strategic pricing guidelines we adopted in that Order.[51] However, special access services encompass a variety of basic access arrangements, whereas the BSEs on which we focus in this proceeding are for the most part features or functions added onto basic switching. We seek comment on whether this difference would make application of guidelines like those used for strategically-priced special access services inappropriate. We also ask parties favoring the special access model to comment on what services must be compared to produce feasible cost-crossover points,[52] why such crossover points are relevant, and how, generally, strategic pricing standards[53] would apply to such rates. We invite comment on the effect that application of such standards would have on the level of rates for BSEs.

20. A third approach might employ a costing model, such as the Bellcore Switching Cost Information System (SCIS), to develop costs for BSE-type features. Many of the BOCs apparently use this model to develop incremental costs for switch-related features at the state level and, in some cases, for new services at the federal level.[54]

Because SCIS is an established model frequently employed in the regulatory arena, requiring its use in federal tariffing would impose minimal implementation burdens and additional administrative expenses for the BOCs. By identifying incremental costs, the SCIS model would provide a floor that ensures that existing access services, such as basic switching, are not subsidizing new, unbundled BSEs or qualified non-ONA services. However, the model produces only a cost suitable for determining the level below which BSEs should not be priced. It does not yield a cost suitable for establishing a maximum rate. We seek comment on whether such a ceiling would be necessary in light of the overall constraint on switched element revenues, and if so, how such a ceiling could be developed.

21. We ask parties to comment on whether the necessity for "closure" between the revenues yielded by a subelement which is unit-costed, and the maximum revenue requirement for the element as a whole, which is determined by allocations from general company-wide accounts, will make this method adminstratively unwieldy.[55] In addition, we seek comment on the types of data that are or should be fed into this model, and whether the model produces results that are consistent and comparable for different types of switching devices and different types of BSEs and that accurately reflect the incremental costs of offering such services.

22. We also invite parties to identify other costing models that might achieve similar or better results than SCIS and to address whether we should attempt to specify the use of one particular model or allow LECs to select among costing models, provided the model selected was consistently used and based on accepted methodologies. Finally, we seek comment on the extent to which we should make special accommodations for small telephone companies and what the nature of such accommodations would be. Parties commenting on this last issue should include specific data regarding the cost of use of the SCIS or similar systems and specify the particular substitute approach they would recommend if those costs were too great to impose on small telephone companies.

23. As a fourth alternative, we could direct carriers to apply fully distributed costing (FDC) principles to all BSE rate subelements. For example, rather than a detailed set of cost allocation rules for each subelement, we could require that, with directly incurred cost as a base, additional costs, such as a fully distributed portion of switching costs, and appropriate overheads, be loaded on to each subelement in a consistent fashion.

24. We seek to ensure that the alternative we adopt will achieve fair results, and yield economically realistic rates with minimal distortional effects. While, as discussed above, ordinary interstate ratepayers should not bear the costs of new services or features they do not use, we do not want to hinder the development of new enhanced services by loading extra costs onto BSEs that substantially exceed the actual economic costs of providing these particular functions.[56] We therefore ask parties to comment on the relative revenue effects of these alternatives, and on the relative price levels each alternative will produce. In particular, we invite parties to submit data demonstrating the comparative effect of these approaches on the price of, and revenues from, both basic switching and the unbundled subelements. Finally, we ask parties to submit proposed language for any amendments to the Commission's Rules needed under the alternative they suggest.

2. *Rate Structure*

25. Given the number and variety of BSEs that the BOCs are offering under their ONA plans,[57] it appears infeasible to prescribe a particular rate structure (*e.g.*, flat-rated or usage-sensitive) for each of these services. Of course, the rate structure employed should be reasonably related to the way in which costs for the service accrue, *e.g.*, on a per-minute, per-call, or per-line/per-month (flat-rated) basis. However, we tentatively conclude that we should not adopt a rule that prescribes a particular method of recovery for BSE subelements.

3. *Application to Non - ONA Elements*

26. Although this proceeding focuses on the adjustments to our access rules necessary for ONA unbundling, it appears that the principles we develop could apply equally to other instances in which LECs offer unbundled or disaggregated services through the access tariffs.[58] We have, on occasion, granted waivers of the access rules to permit LECs to offer such new, separate subelements.[59] Because of the potentially disruptive effects on existing customers, we do not propose to require compliance with the requirements to be adopted in this proceeding in those cases in which a waiver of the Part 69 rules has already been granted.[60] However, we propose to apply these rules to non-ONA services that this Commission in the future may either require or permit (through waiver or otherwise) LECs to offer as separate subelements in their access tariffs. Thus, if a LEC wished to offer a new unbundled access service that was not a BSE included in its ONA plan[61] or otherwise the subject of a Commission requirement, it could do so by filing a petition for waiver in which it would describe the service and demonstrate how it would comply with the unbundling requirements we establish in this proceeding.[62] We seek comment on these proposals, and in particular on the applicability of the BSE ratemaking methodologies considered herein.

4. *Jurisdictional Measurement*

27. The *BOC ONA Order* concluded that switched BSAs are technically similar to the feature groups now in the federal access tariffs.[63] For FGA and FGB access arrangements, LECs generally lack the technical ability to identify and measure jurisdictional usage.[64] The users of FGA and FGB -- typically IXCs -- generally supply this information by reporting the percentage of interstate use (PIU) of their traffic, which the IXCs could actually measure or reasonably approximate. The Federal-State Joint Board in CC Docket No. 85-124 recently recommended that the Entry/Exit Surrogate (EES) method be used to determine the originating location of a call for purposes of computing a PIU for FGA and FGB traffic.[65] ESPs that purchase FGA or FGB connections in lieu of local business lines, apparently provide LECs with PIUs.[66] We tentatively conclude that this method of jurisdictional measurement, --that is, a PIU based on the EES method -- will provide a reasonable basis for approximating jurisdictional usage for FGA and FGB connections used as BSAs. We seek comment on this tentative conclusion.[67]

28. In many cases, a particular BSE will be used with all the traffic on the underlying BSA and the jurisdictional use of the BSE will be identical to that of the BSA. In other cases, a BSE will be employed only with a portion of the traffic on the BSA, and the jurisdictional use of the BSE could differ somewhat from that of the BSA.[68] It appears, however, that generic software in exist-

ing switches does not now measure separately the jurisdictional usage of each and every BSE, even for those access arrangements, such as FGD, for which jurisdictional measurement of the overall traffic is possible. Given these technical limitations, the relatively small costs associated with a BSE, and the probability that many BSEs may be associated with a single BSA, we doubt that it would be feasible to require an ESP or other user to submit an individual "PIU" for each BSE. Because an ESP or other user must obtain a BSA in order to use a BSE, it would seem reasonable that in most circumstances, BSE usage would be similar to that of the associated BSA. We therefore propose that for billing purposes, when actual BSE measurement is impractical, LECs apply the jurisdictional usage of the underlying BSA to BSEs associated with that BSA. While, as noted above, the jurisdictional usage of the BSE and BSA could conceivably diverge, we think this approach will provide a reasonable approximation for BSEs and under the circumstances is the only practical way to implement unbundling in federal access tariffs.

IV. ACCESS CHARGE TREATMENT OF ESPS

A. *Background and General Issues*

29. At the time we formulated our access charge rules, some interstate service providers, including certain basic service resellers and ESPs, were using local business lines to obtain access to the local exchange for their interstate traffic. The rates for such local business lines were typically well below the rates that would apply under our access charge rules for technically similar connections. Accordingly, we were concerned that the immediate imposition of access charges on these service providers might unduly burden their operations and cause disruptions in service to the public. As a transition to avoid this "rate shock", we continued to permit these interstate service providers to use local business lines or other state-tariffed forms of access for their interstate traffic, thereby exempting them from federal access charges.[69] While we have since eliminated this transitional exemption for all common carrier telecommunications services, we have continued the exemption for ESPs, finding that the enhanced service industry is undergoing a period of particularly rapid and fundamental change so that our concerns about the adverse consequences of rate shock from the imposition of access changes on ESPs remain highly relevant.[70]

30. As a result, many ESPs currently pay state-tariffed business line rates and subscriber line charges for their switched interstate access connections.[71] The *BOC ONA Order* expressly preserved this exemption from access charges for ESPs.[72] That Order stated, however, that this proceeding would examine the question of whether the special treatment for ESPs should be included explicitly in the federal tariffs -- that is, whether interstate BSAs, which are technically similar to the FGs and other interstate access arrangements now tariffed at the federal level, should be available to ESPs at "something other than generally applicable interstate access charges."[73] In this proceeding, we tentatively conclude that we should retain the exemption in its current form.[74] However, we present two specific alternatives and invite interested persons to comment on the relative merits of these alternatives and the status quo.

31. We could require ESPs to purchase interstate access for their interstate traffic, but exempt ESPs from paying the carrier common line charge (CCLC), which now recovers the interstate share of local exchange non-traffic-sensitive (NTS) costs that remain after the deduction of subscriber line charge revenues. It would also be possible to grant ESPs an across-the-board percentage discount on all switched access rates, including traffic sensitive (TS) charges.

32. In evaluating these alternative approaches for ESP access charges, certain policy goals guide our determinations. First, as we have repeatedly recognized, [75] the ESP industry has an important need for stability, particularly at this transitional phase of its development. Thus, any alternative to the existing exemption should minimize disruptive effects on ESPs. Second, we balance our desire to foster development of the enhanced service industry with a concern that any special treatment of ESPs not unduly burden other interstate ratepayers. Third, rules relating to ESPs should not have disruptive effects on state policies, nor impermissibly intrude on their sphere of authority.[76] We invite comment on the following analysis of the present exemption and of the other options described above, which applies these policies. We also invite parties advocating a change from the existing exemption to submit proposed language for any changes in the Commission's Rules that may be necessary.

B. *Analysis of the Existing Exemption*

33. The *BOC ONA Order*, in preserving the existing ESP exemption, explains that the development and implementation of ONA marks a "dynamic transitional period for the enhanced services industry,"[77] and notes that withdrawal of existing access arrangements could have disruptive effects on that industry, thereby jeopardizing achievement of ONA objectives. Indeed, that Order states that we will not approve an ONA plan that restricts ESPs from obtaining service arrangements now available to them and rejects a BellSouth proposal to impose such restrictions.[78] We believe that continuation of the current exemption would provide predictability and stability for the enhanced services industry during the transition to ONA.[79] The present treatment of the interstate traffic of ESPs appears to be providing significant benefits to ESPs while minimizing disruption of state policies.

34. Maintaining the current exemption arguably places some burden on ordinary interstate ratepayers since ESP customers do not contribute to the interstate share of local exchange NTS costs to the same extent that customers of other interstate services do. While ESPs often assert that this does not mean enhanced services are being subsidized, only that those services avoid paying a subsidy, other interstate users of the local exchange may face higher charges than they would in the absence of an access charge exemption for enhanced service traffic.[80] On the other hand, while the present ESP exemption affects the NTS charges paid by other access customers, it does not seem to have a substantial effect on TS charges. Unlike NTS costs, which are separated between the interstate and intrastate jurisdictions on the basis of a flat-rate allocator,[81] TS costs are separated on the basis of relative usage. ESP traffic over local business lines is classified as local traffic for separations purposes, with the result that TS costs associated with ESP traffic are apportioned to the intrastate jurisdiction,[82] and are recovered through intrastate charges paid by ESPs and other purchasers of intra-

state services. Thus, assuming there is an approximate match between interstate TS costs and rates, the present ESP exemption would not seem to have a significant impact on interstate TS access charges.

C. *Analysis of ESP Exemption Alternatives*

1. *Exemption from the Carrier Common Line Charge*

35. Requiring ESPs to pay interstate TS charges while eliminating the carrier common line charge (CCLC) for ESPs would, in contrast to continuing the current exemption, cause a measure of instability for the ESP industry at this critical time, due to uncertainties as to how the application of other access charges would affect the viability of existing ESP services. On the other hand, this option would probably not appreciably increase burdens on interstate ratepayers beyond those imposed by the current ESP exemption from access charges.[83] A reclassification of ESP traffic that has been deemed to be intrastate for separations purposes would increase TS costs apportioned to the interstate jurisdiction.[84] However, because NTS costs are separated on the basis of a flat allocator, rather than relative usage, there would be no increase in interstate NTS costs as a result of the traffic shift. Hence, assuming ESPs paid the traffic-sensitive charges associated with their traffic, exempting them from the CCLC would not appear to result in any increased costs for other interstate ratepayers when compared to the present situation.

36. Furthermore, the CCLC recovers NTS costs on a traffic-sensitive basis; it is not cost-based in the sense that it imposes on customers' use of the network charges that are not related to that usage. If it is true, as some ESPs contend,[85] that demand for their services is highly price-elastic, both absolutely and relative to other interstate services,[86] eliminating the CCLC for ESPs might reduce marketplace distortions from access charges, at least at this early stage of ONA implementation. This would permit ESPs to avoid including this non-cost-based charge in the prices they charge their customers, thereby stimulating demand for their services. Under this scenario, once the enhanced service industry is more settled, and its demand elasticities more like those of other interstate services, it might be appropriate to phase in the CCLC.

2. *Percentage Discount*

37. Like the CCLC exemption alternative, substitution of an across-the-board percentage discount for the existing ESP exemption would inject a measure of instability into the ESP industry. Unlike the CCLC exemption option, however, the percentage discount might place greater burdens on other interstate ratepayers compared to the present exemption. If we established a discount for ESPs for all switched access elements, including TS elements, the access charges paid by ESPs would probably not fully recover the additional costs shifted to the interstate jurisdiction as the result of reclassifying ESP traffic for separations purposes. This alternative could tend to increase the TS rates that other interstate access customers would bear, at a pace proportionate to the increase in ESP interstate traffic. On the other hand, through a discounted CCLC charge, ESPs would be paying at least a portion of the interstate NTS costs that they now avoid. Whether interstate ratepayers would, on balance, be harmed or helped by such an ESP discount relative to the present ESP exemption would seem to depend on the magnitude of the discount. In light of these concerns, we ask parties that support this approach to (i) comment on the factors we should consider, and data that would be required, in determining an appropriate discount level, and (ii) propose specific percentage discounts with supporting analyses and information.[87]

D. *Other Issues*

1. *Duration*

38. We established an ESP exemption from access charges as a transitional measure, to avoid rate shock, and we have sustained that exemption during the transition to ONA.[88] If, contrary to our tentative conclusion, we decide to substitute one of the other two alternatives discussed above for the current form of the exemption, we will have to determine whether to specify a transition period, or leave the transition of indefinite duration. For example, it might be appropriate to phase out a CCLC exemption when the enhanced service industry is less in a state of flux. The magnitude of any discount afforded ESPs might have an effect on the length of time we would permit such a discount to remain in effect, or on whether we would seek to establish a period of time in which it would be phased out. We invite comment on whether to specify a particular transition period.

2. *Application to End Users*

39. The current exemption for ESPs is implemented by including ESPs in the definition of "end user" in our access charge rules.[89] We tentatively find that, if we were to adopt a new form of the ESP exemption, other entities described as end users should be able to order the same services that are offered to ESPs from federal tariffs for purposes of interstate access. We seek comment on this tentative finding.

40. We also invite comment on the effect on state regulatory policies of extending a new access charge rule to end users. For example, some BOCs claim that end users now purchase interstate access for intrastate traffic when interstate FGs that provide LATA-wide access can function as the equivalent of intraLATA WATS and are priced at lower rates. We encourage comment on the extent of this phenomenon and whether any of the alternatives discussed in this Notice would exacerbate this situation.

3. *Implementation: ESP/End User Distinction*

41. Although we would expect to extend any access charge arrangement we adopt for ESPs to end users, we are not purporting in this docket to solve all the problems associated with "leakage" of interstate traffic into the local exchange through PBXs or similar devices on end user premises. Thus, we are not proposing to apply access charges, with or without any partial exemption or discount, to end user leaky PBX traffic. We adopt this course for two reasons. First, the policy problems underlying the ESP exemption and the rules for the leaky PBX traffic are different. The former is based on concerns about rate shock on ESPs from the application of access charges; the latter is based on the inability to distinguish leaked interstate traffic from ordinary local calling over certain end user lines. Thus, the ESP exemption represents an affirmative decision to provide ESPs with special treatment; the leaky PBX rules are not really an "exemption" at all

(in the sense of an affirmative policy determination that leaked traffic should receive special treatment), but a pragmatic accommodation to measurement difficulties.[90] Second, we have already initiated a Rule Making to re-examine the leaky PBX problem.[91] We will address the leaky PBX issues in that proceeding while keeping the focus of this proceeding on access charges for enhanced services.

42. Nevertheless, the persistence of the leaky PBX phenomenon creates at least one potential implementation problem for the alternatives to the ESP exemption we have described in the Notice. If we adopt either the CCLC exemption or percentage discount option for ESPs in lieu of the present exemption, LECs would have to distinguish between ESPs and end users for purposes of determining eligibility for local business line service, because, under the alternatives we have described, ESPs would be required to take interstate access instead of such state tariffed lines for their interstate traffic. We seek comment on the problems involved in making such a differentiation[92] and on the impact it should have on our decision to retain or to change the current form of the ESP exemption.

4. *Mix - and - Match*

43. The *BOC ONA Order* [93] stated that we would consider in this proceeding whether to permit ESPs to "mix-and-match" state and federal BSAs and BSEs. For example, an ESP could "mix-and-match" a state-tariffed local business line as a BSA with a federally tariffed BSE. Upon further consideration, we have concluded that this approach would have a number of negative effects on state and federal policies and for this reason do not present mix-and-match as an alternative to the existing exemption.

44. First, a mix-and-match arrangement could result in a mismatch of BSE costs and revenues. As we have stated, many BSE costs are switch-related and they are separated on a usage-sensitive basis.[94] If an ESP takes BSEs from an interstate tariff while using local business lines as BSAs, the usage for such local lines would presumably be counted as intrastate for separations purposes. As a result, the costs of these BSEs would be apportioned to the state jurisdiction, but the revenues associated with the BSEs would be apportioned to the interstate jurisdiction, leading to a cost/revenue mismatch between the jurisdictions.

45. Second, mix-and-match could seriously undermine state policies. As we stated in the *BOC ONA Order*, states often price local services that are identical to, or close substitutes for, BSEs to generate support for other basic services, particularly residential local exchange service.[95] Under a mix-and-match arrangement, ESPs could purchase state-tariffed BSAs, like local business lines, but avoid the state-tariffed charges for additional features and functions by purchasing federally tariffed BSEs. This approach could threaten to cause migrations among state and federally tariffed BSEs, with disruptive effects on ratemaking policies.

46. Third, we are also concerned that this Commission and state commissions might impose different terms and conditions on the services ESPs use. For example, state and federal tariffs could differ on use or customer restrictions or conditions, service quality standards, and service terms and termination liabilities that might apply with respect to corresponding BSAs and BSEs. More generally, a mix-and-match alternative might be difficult to implement in a manner that enables each jurisdiction to maintain its own regulatory policies and avoid intruding on the other jurisdiction's ability to implement its policies. While the states and this Commission do not always follow the same regulatory philosophy, different approaches are sustainable so long as they are internally consistent and coherent when taken as a whole. Thus, within any given jurisdiction, the terms, conditions, and rates for one set of services may be influenced by the regulation of another set of services. By permitting ESPs to purchase service elements or components freely from different tariffs, the coherence of each jurisdiction's regulatory policies could be undermined.

E. *Tentative Conclusion on the Alternatives*

47. Based on the policy impacts described above, we tentatively conclude that the current ESP access charge exemption is preferable to any of the alternatives we have described in providing substantial benefits to enhanced services while minimizing adverse effects on state policies and interstate ratepayers, and avoiding implementation problems. However, we invite comment on the relative merits of the present form of the exemption and the two alternatives we present,[96] and urge commenting parties to include specific data on the rate effects of these alternatives on ESPs, other interstate users, local exchange customers, and LECs, as compared with the existing exemption. Parties favoring a particular option should address the policy, legal, and practical issues raised by their proposal.

V. COMPUTER III PRICING

48. *Computer III* established a set of pricing requirements for basic ONA services. These requirements permit, but do not require, rates for transmission to reflect distance-sensitive costs, and require BOCs to include an averaged Basic Interconnection Charge (BIC) and an averaged Basic Concentration Charge (BCC) in ONA tariffs. The BIC was designed to reflect charges for the interconnection facilities and basic services used by all ESPs, while the BCC reflects charges for the traffic concentration equipment located at the carrier's premises.[97] We formulated these rules to further "the dual goals of advancing the availability of efficient enhanced services while not unduly perturbing competition."[98] The *Phase I Further Reconsideration* held that BOCs could satisfy our additional requirement to minimize transmission costs by offering price parity, *i.e.*, by charging themselves the same rates for ONA services that BOCs charge ESPs.[99]

49. We propose to eliminate the ONA pricing requirements for the BIC, BCC, and distance-sensitive transmission, while retaining the CEI parameter that transmission costs be minimized. All of the BOC ONA plans except BellSouth's chose to employ price parity to minimize transmission costs, and we required BellSouth to clarify its proposal to satisfy that requirement. Moreover, in line with our decision to encourage the use of existing services to spur ONA development,[100] many of the BOCs' initial ONA services consist of unbundled versions of existing, generally tariffed services.[101] The *BOC ONA Order* held that the ONA pricing requirements are satisfied if the BOCs provide BICs and BCCs at generally tariffed rates and charge themselves those rates, even if the BIC or BCC charges are not unbundled. This finding makes the BIC and BCC unnecessary for all BOCs applying price

parity.[102] Even for a plan such as BellSouth's initial ONA filing, which does not employ price parity, we tentatively find that the minimization of transmission costs requirement, a CEI requirement defined elsewhere in the *Computer III Order*,[103] more directly guarantees our goals of equality and efficiency than the *Computer III* pricing structure. This same reasoning applies to our distance-sensitive pricing requirement, particularly as that rule is permissive only.[104] Moreover, the increased federal tariffing of ONA services required in the *BOC ONA Order* directly imposes general federal tariffing and pricing policies on these services, further attenuating the need for separate *Computer III* pricing requirements.[105] Finally, our experience in reviewing CEI and ONA plans indicates that these requirements have not been particularly meaningful in furthering our *Computer III* goals. We note that we have not invoked these requirements as the basis for directing the BOCs to amend their ONA and CEI plans. In view of the foregoing, we tentatively find that the *Computer III* pricing rules are unnecessary and should be eliminated. We invite comment on this analysis.

VI. REGULATORY FLEXIBILITY ACT - INITIAL ANALYSIS

50. We certify that the Regulatory Flexibility Act[106] is not applicable to the rule changes we are proposing in this proceeding. In accordance with the provisions of Section 605 of that Act, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of a summary of this Notice in the Federal Register.

VII. PAPERWORK REDUCTION ACT ANALYSIS

51. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public.

VIII. EX PARTE PROVISIONS

52. For purposes of this non-restricted notice and comment Rule Making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the "Sunshine Agenda" period. *See generally* Section 1.1206(a) of this Commission's Rules. The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when this Commission (1) releases the text of a decision or Order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. *See* Section 1.202(f) of this Commission's Rules. During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by this Commission or Commission staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. *See* Section 1.1203 of this Commission's Rules.

53. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decison-making personnel which (1) if written, is not served on the parties to the proceeding; or (2) if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. *See* Section 1.202(b) of this Commission's Rules. Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of that presentation to this Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in the person's previously-filed written comments, memoranda, or filings in this proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See* Section 1.1206 of this Commission's Rules.

54. Pursuant to 47 U.S.C. §§ 154(i), 154 (j), 201-05, 218, and 403, and 5 U.S.C. § 553, NOTICE IS HEREBY GIVEN of the proposed adoption of new or modified rules in accordance with the discussion and delineation of issues in this Notice of Proposed Rule Making.

55. Comments on the issues and proposals discussed herein, together with proposed rule amendments, if any, ARE TO BE FILED not later than **June 26, 1989** and replies ARE TO BE FILED not later than **July 26, 1989.** In accordance with the provisions of Section 1.419 of this Commission's Rules, 47 C.F.R. § 1.419, an original and five copies of all statements, briefs, comments or replies shall be filed with the Federal Communications Commission, Washington, D.C. 20554, and all such filings will be available for public inspection in the Docket Reference Room at this Commission's Washington, D.C. office. One additional copy SHALL BE FILED at the offices of International Transcription Services (ITS), 1919 M Street, N.W., Room 246, Washington, D.C. 20037. In reaching our decision, this Commission may consider information and ideas not contained in filings, provided that such information is reduced to writing and placed in the public file, and provided that the fact of this Commission's reliance on any such information or ideas is noted in the Order.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Phase I, 4 FCC Rcd 1, 144-45, 146-47, paras. 278-79, 281-82 (1988) (*BOC ONA Order), pets. for recon. pending, appeal pending sub nom.* Pacific Bell & Nevada Bell v. FCC, No. 89-1194 (D.C. Cir.)(pet. rev. filed Mar. 20, 1989).

[2] Part 69 of the Commission's Rules, 47 C.F.R. Part 69.

[3] Non-BOC telephone companies are not subject to our ONA requirements and thus do not have to offer unbundled BSEs. However, if those carriers choose to offer BSEs or other unbundled access services, the rules we adopt in this proceeding would apply to those offerings.

[4] "Enhanced services" are services offered over common carrier facilities which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under Title II of the Communications Act. 47 C.F.R. § 64.702(a).

[5] Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), *Report and Order*, 104 FCC 2d 958 (1986) (*Phase I Order), modified on reconsideration*, 2 FCC Rcd 3035 (1987) (*Phase I Reconsideration), further reconsideration*, 3 RCC Rcd 1135 (1988) (*Phase I Further Reconsideration), pets. for further reconsideration pending, appeals pending sub nom.* California v. FCC, No. 87-7230 (9th Cir.)(pet. for rev. filed May 28, 1987) and *sub nom.* Illinois Bell Telephone Co. v. FCC, No. 88-1364 (D.C. Cir. (pet. for rev. filed May 16, 1988). *See also Report and Order*, 2 FCC Rcd 3072 (*Phase II Order), modified on reconsideration*, 3 FCC Rcd 1150 (1988) (*Phase II Reconsideration), pets. for further reconsideration pending, appeals pending sub nom.* BellSouth Corp. v. FCC, No. 88-7290 (9th Cir.) (pet. for rev. filed Apr. 20, 1988), California v. FCC, No. 88-7183 (9th Cir.) (pet. for rev. filed May 13, 1988) and Illinois Bell Telephone Co. v. FCC, No. 88-1364 (D.C. Cir.) (pet. for rev. filed May 16, 1988).

[6] *Phase I Order*, 104 FCC 2d at 1064, para. 214.

[7] *Id.* at 1065, para. 217.

[8] *BOC ONA Order*, 4 FCC Rcd at 36, para. 56.

[9] *See generally id.*, 4 FCC Rcd at 36, paras. 56-57. Under the unbundling we propose, bundled Feature Groups (FGs), such as a "bundled" form of FGD including ANI capability would no longer be available.

[10] *Id.*, 4 FCC Rcd at 44-45, para. 77.

[11] *Id.*, 4 FCC Rcd at 47, para. 83.

[12] *Id.*, 4 FCC Rcd at 145, para. 279.

[13] *Id.*, 4 FCC Rcd at 144-45, para. 278.

[14] *Id.*, 4 FCC Rcd at 143 n. 625. *See generally supra* para. 6 (description of BSE selection criteria).

[15] *BOC ONA Order*, 4 FCC Rcd at 144-46, paras. 277, 280.

[16] Part 36 of this Commission's Rules, 47 C.F.R. Part 36.

[17] 47 C.F.R. §§ 69.105, 69.106, 69.111. The Part 69 rules also establish separate elements for limited pay telephone, information, and equal access. 47 C.F.R. §§ 69.103, 69.109, 69.107. *See also* MTS and WATS Market Structure, Amendment of Part 69 of the Commission's Rules for Recovery of Equal Access Costs, CC Docket No. 78-72, FCC 89-16, 4 FCC Rcd 2104 (1989) (*Equal Access Order).*

[18] 47 C.F.R. § 69.113. The rules do direct LECs to establish "[a]ppropriate subelements," but do not mandate specific cost allocation or rate structure requirements for such subelements.

[19] *BOC ONA Order*, 4 FCC Rcd at 146, para. 281.

[20] *BOC ONA Order*, 4 FCC Rcd at 36 n. 110. *See also id.* at 146, para. 281.

[21] *See generally* Bell Operating Companies ONA Special Report No. 1, Issue 2: Enhanced Service Provider Request for Network Capabilities (Oct. 1987)(ONA Special Report) *in* Southwestern Bell Telephone Company's ONA Plan (SWBT ONA Plan), App. 23 (filed Jan. 25, 1988).

[22] 47 C.F.R. § 69.106.

[23] *See, e.g.*, BSE Request No. 79 (Private Line Conditioning), *in* ONA Special Report, *supra* note 21, at 19.

[24] *See* 47 C.F.R. § 69.113 (a).

[25] NYNEX ONA Plan at 32 (filed Feb. 1, 1988) (line circuit switched with T1 transport, trunk circuit switched with T1 transport).

[26] *See, e.g.*, NYNEX ONA Plan, *supra* note 25, at 33 (call redirection); SWBT ONA Plan, *supra* note 21, at 63 (packet closed user group).

[27] *See supra* Section IIIA.

[28] *See generally* 47 C.F.R. § 65.200-65.400 (interstate rate of return prescription methodology for local exchange carriers).

[29] MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, 93 FCC 2d 241, 315 (1983)(Third Report and Order), *modified on further recon.*, 97 FCC 2d 682 (1983) (Further Reconsideration Order), *modified on second further recon.*, 97 FCC 2d 834 (1984), *aff'd in pertinent part sub nom.* Nat'l Ass'n of Regulatory Util. Comm'rs v. FCC, 737 F. 2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985), *modified on further recon.*, 99 FCC 2d 708 (1984), *aff'd sub nom.*, Am. Tel. and Tel. Co. v. FCC, 832 F. 2d 1285 (D.C. Cir. 1987), *modified on further recon.*, 101 FCC 2d 1222 (1985), *recon. denied*, 102 FCC 2d 849 (1985). *See, e.g.*, 47 C.F.R. § 69.106(b) (local switching charge to be computed by dividing the projected "annual revenue requirement" by access minutes of use); 47 C.F.R. § 69.2 (c) (defines "annual revenue requirement" as the sum of the return component and the expense component); 47 C.F.R. § 69.2(ff) (defines "return component" as the net investment attributable to a particular element or category multiplied by the "authorized rate of return").

[30] Regulation of Small Telephone Companies, CC Docket No. 86-467, 2 FCC Rcd 3811, 3812, paras. 8-9 (1987); 47 C.F.R. § 61.38 (a).

[31] 47 C.F.R. §§ 69.3 (d), (e).

[32] Commission Requirements for Cost Support Material To Be Filed with 1989 Annual Access Tariffs, DA 88-1554, 4 FCC Rcd 1662 (1988).

[33] 47 C.F.R. § 61.38.

[34] We and a Joint Board recently made significant efforts to simplify our separations rules. Amendment of Part 67 (New Part 69) of the Commission's Rules and Establishment of a Federal-State Joint Board, 2 FCC Rcd 2582 (Federal-State Joint Board 1987); MTS and WATS Market Structure, 2 FCC Rcd 2639 (1987), *recon. granted in part on other grounds and denied in part, and supp. notice on other issues*, 2 FCC Rcd 5349 (1987), *order inviting comments*, 3 FCC Rcd 2774 (1988).

[35] *See infra* note 57; *see generally BOC ONA Order*, 4 FCC Rcd at 288-99, Apps. D, E.

[36] "Program store words" is a measure of the amount of computer memory that a switch uses.

[37] *See supra* para. 14.

[38] We use the term "basic switching" in this Notice to describe the provision of local exchange switching facilities (including services formerly included in separate line termination and intercept elements, *see* Amendment of Part 69 of the Commission's Rules and Regulations, Access Charges, To Conform It With Part 36, Jurisdictional Separations Procedures, 2 FCC Rcd 6447 (1987)(*Conformance Order), on recon.*, 4 FCC Rcd 765 (1988)), excluding the provision of BSEs or other unbundled offerings within the local switching category. Costs for basic switching are those not otherwise recovered by BSEs or other unbundled offerings within the local switching category. Basic switching charges are expressed in dollars and cents per access

minute of use. 47 C.F.R. §§ 69.106. As a transitional matter, we will use the LS1 or LS2 subelements, the latter of which may be premium or nonpremium, to charge for basic switching. 47 C.F.R. §§ 69.205, 69.206. The LS1 subelement phases out after 1992. 47 C.F.R. § 69.205 (e). References to the "overall" local switching element or to return on the element as a "whole" include, in addition to basic switching, other subelements that are or will be part of the local switching category, such as unbundled BSEs or functions for which waivers of the Part 69 rules may have been granted to permit an unbundled offering. *See infra* note 59.

[39] MCI Telecommunications Corp. v. FCC, 675 F. 2d 408, 413 (D.C. Cir. 1982) (quoting Aeronautical Radio, Inc. v. FCC, 642 F. 2d 1221, 1228 (D. C. Cir. 1980), *cert. denied*, 451 U.S. 920 (1981)).

[40] 47 U.S.C. § 201 (b).

[41] Jersey Cent. Power & Light v. FERC, 810 F. 2d 1168, 1177-78 (D. C. Cir. 1987).

[42] *See supra* para. 14.

[43] *See generally* Mobil Oil Corp. v. FPC, 417 U.S. 283, 316-21 (1974) (upholding FPC incentive plan permitting an increase in rates to encourage increased production).

[44] We do not propose in this proceeding to alter the rules applicable to subelements already codified in the Part 69 rules, for which a particular rate structure, rate relationship or cost allocation may already apply. *See, e.g.*, 47 C.F.R. § 69.205 (c), (d), (e) (LS1, LS2 premium minutes). *See also* 47 C.F.R. § 69.107 (equal access); *Equal Access Order*, *supra*.

[45] Should a price cap form of regulation such as is proposed in Policy and Rules Concerning Rates for Dominant Carriers, Report and Order and Second Further Notice of Proposed Rule Making, CC Docket No. 87-313, FCC 89-91 (released Apr.17, 1989), ultimately be adopted for local exchange carriers, our proposed methodology for pricing BSEs could be modified to harmonize with the price cap constraints, *e.g.*, "caps" and "bands" that would take the place of existing rate-of-return constraints. We note that the price cap proceeding invites comment on whether any special constraints should be applied to BSEs. *See id.* at n. 1579.

[46] In some cases, unbundling of BSEs will result in a separate charge for an existing, bundled option, such as hunting, *see, e.g.*, Ameritech Operating Companies, Tariff F.C.C. No. 2, § 6.3.1(A)(10),(11) at Page 160, for which the carrier previously did not separately charge. *Cf.* SWB Tariff F.C.C. No. 68, § 6.2.1 (B) (1)(a) at Pages 98.22-98.22.1, § 6.8.2 (B)(1) at Page 98.107.1 (non-recurring charge of $1.89 only applicable to hunt arrangement installed subsequent to installation of line). Thus, some customers previously paying bundled rates which included the costs of nonchargeable options will now be able to pay only for the BSEs which they actually use.

[47] Most BOCs plan to employ price parity and thus to take basic services at the same generally tariffed rates that their competitors will pay. *Phase I Further Reconsideration*, 3 FCC Rcd at 1141, para. 46. *See also Phase II Reconsideration*, 3 FCC Rcd at 1157, para. 49. When BOCs and ESPs take the same services, but in different quantities, enforcement of price parity is relatively straightforward. *BOC ONA Order*, 4 FCC Rcd at 88-89, para. 172. The issue we raise in the text, however, concerns pricing when, for example, BOCs use different BSEs from those that their competition use. *Cf. id.*, 4 FCC Rcd at 85 n. 326 ("While price parity can be an important tool in preventing unreasonable discrimination in the rates BOCs charge their competitors, it cannot alone ensure that those rates are set at levels that reflect the costs of providing basic service and that promote the efficient development of telecommunications-based industries.").

[48] 47 C.F.R. § 69.113 (b), (d).

[49] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase II, Part 1, FCC 88-321, Mimeo No. 37510 (released Dec. 1, 1988) (*Strategic Pricing Order*), FCC Rcd (1988), *recon. pending*. We have also required, in the absence of a specific showing under Section 61.40(b) of this Commission's Rules, 47 C.F.R. § 61.40(b), compliance with the private line guidelines codified in that rule. Investigation of Access and Divestiture Related Tariffs, Phase I and Phase II, Part 1, CC Docket No. 83-1145, FCC 84-524 (released Nov. 9, 1984), *reprinted in* 49 Fed. Reg. 50,457 (Dec. 28, 1984), *rev'd and remanded on other grounds sub nom.*, Western Union Telegraph Co. v. FCC, 815 F.2d 1495 (D.C.Cir. 1987).

[50] "HiCap" refers to 1.544 Mbps High Capacity Service. Each HiCap facility can readily be converted into up to 24 voice grade lines. *Strategic Pricing Order*, *supra* note 49, paras. 1, 5.

[51] *Id.* at paras. 74-76, 58.

[52] *See generally id.* at paras. 74-76.

[53] *Id.* at para. 58.

[54] *See, e.g.*, Ameritech Tariff F.C.C. No. 2, Transmittal No. 148, Description and Justification, at 4-5 & Workpaper 5 (Public Switched Digital Service) (filed Dec. 28, 1987).

[55] For example, introduction of a new subelement priced on the basis of a unit cost, "bottoms up" analysis might require resetting the prices of existing subelements in order that the rate of return constraint on the overall element be met.

[56] We think it relevant in this regard that ESPs and other purchasers of BSEs will also purchase basic local switching as part of the underlying BSA they require for network access. Thus, these purchasers will be making a full contribution toward the overall cost of the switch as well as whatever overhead loadings are now included in the local switching element.

[57] *BOC ONA Order*, 4 FCC Rcd at 68, 289, para. 128 & App. D, Table 2 (although only 29 ONA services will be initially available in all regions, the number of ONA services proposed for initial deployment within each region ranges from 49 to 58).

[58] However, because this proceeding is narrowly designed to bring our access charge rules into conformance with unbundling principles, it is not the appropriate docket to raise requests for a more general reformulation of the access charge structure as, for example, some carriers proposed in alternative access charge plans. *See, e.g.*, Petitions for Waiver of Various Sections of Part 69 of the Commission's Rules, Filed by the Mountain States Telephone and Telegraph Co., 104 FCC 2d 1132 (1986), *on recon.*, 2 FCC Rcd 28 (1987); Petitions for Waiver of Various Sections of Part 69 of the Commission's Rules, Filed by the New York Telephone Co., 2 FCC Rcd 61 (1987).

[59] *See, e.g.*, Mountain States Telephone and Telegraph Co., Revisions to Tariff F.C.C. No. 1, Transmittal No. 7, Digicom SwitchNet 56, Mimeo No. 0334, (released Oct. 24, 1986) (SwitchNet 56 service); New York Telephone Co., Tariff F.C.C. No. 41, Transmittal No. 884, 3 FCC Rcd 2993 (1988) (interim 900 access service); Ameritech Operating Companies' Petition for Waiver of Part 69, CC Docket No. 86-279, Mimeo No. 5326 (released June 23, 1986), *order designating issues*, Mimeo No. 5586 (released July 3, 1986), *further order*, 2 FCC Rcd 5905 (1987) (interim 800 access service).

[60] Furthermore, for certain access services, we already have amended our rules to provide for a new element or subelement. We do not propose to apply the requirements we develop herein to these services. In such cases we have already considered

specific allocation and rate structure issues, and need not disturb our prior determination. *See, e.g., Equal Access Order, supra.*

[61] By "ONA plan," we refer not only to the BOC plans as filed, but to amendments to the plans, including those made pursuant to our requirement for annual updates on BSE availability.

[62] Such waivers may be appropriate for unbundling which "isolate[s] special service functions that do not correspond" with existing access elements. *See Conformance Order, supra* note 38, 2 FCC Rcd at 6455. As noted above, we have granted such waivers in the past to permit creation of subelements for special service functions such as 800 and 900 access service. *See supra* note 59.

[63] *BOC ONA Order*, 4 FCC Rcd at 144-45, para. 278.

[64] For FGA and FGB, the LEC does not capture called number information, but merely transmits this information to the interexchange carrier (IXC). Thus, for FGA and FGB, the LEC cannot identify the jurisdictional nature of the call.

[65] Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service, CC Docket No. 85-124, 88J-5, 4 FCC Rcd 1966 (1989) (Jt. Bd.) (*Joint Board Order*). A surrogate must be used instead of actual jurisdictional measurement because FGA and FGB do not provide ANI, an access feature that enables the IXC to identify the originating number of a call. Under the EES method of jurisdictional determination, calls that enter an IXC network in the same state as that in which the called station is located are deemed to be intrastate, and calls that terminate in a different state from their IXC point of entry are considered interstate. *Joint Board Order* at n.4.

[66] *See, e.g.*, Bell Atlantic Tariff F.C.C. No. 1, § 2.3.10 (A); Ameritech Tariff F.C.C. No. 2, § 2.3.10 (applying jurisdictional reporting requirements to customers generally).

[67] We recognize that jurisdictional measurement of enhanced service traffic may present particular difficulties. ESPs may not always be able to discern the ultimate destination of a call (for example, when traffic is transmitted from one packet network to another) and there may be questions concerning whether a single call can have both interstate and intrastate components (for example, when a computer user during a single session interacts sequentially with a number of data bases in different states). Nevertheless, we think the EES method, perhaps with some reasonable accommodations for special circumstances presented by certain types of enhanced traffic, should be workable for ESPs. ESPs now purchase interstate access services for certain applications and apparently provide LECs with PIUs in such circumstances. We also note that for many types of enhanced services, jurisdictional measurement may be quite straightforward. For example, when an enhanced service involves communication with a single or a small number of host computers, it may be possible to determine easily that all the traffic through a particular ESP node for that service is interstate. For other types of enhanced services, such as alarm, monitoring, or meter reading services, it may be possible to determine that all, or virtually all, the traffic is intrastate. Parties are, of course, invited to comment on these aspects of jurisdictional measurement.

[68] For example, BSEs like ANI could well be used with all traffic on the associated BSA, as the ANI feature is used with FGD access today. In contrast, BSEs like bridging may be used only with a portion of the traffic on the BSA, and that portion may have different jurisdictional characteristics from the total traffic on the BSA.

[69] Further Reconsideration Order, *supra* note 29, 97 FCC 2d at 715. *See generally* 47 C.F.R. §§ 69.2(m); 69.5(a).

[70] *See* Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd 2631 (1988)(*ESP Order*).

[71] The access charge exemption for enhanced services is implemented by treating ESPs as end users for the purposes of Part 69. Thus, ESPs pay both the subscriber line charge on their business lines and the special access surcharge on their special access lines under the same conditions as those applicable to end users. 47 C.F.R. §§ 69.104(b),(d); 69.2(m); 69.5(a),(c); 69.115.

[72] *BOC ONA Order*, 4 FCC Rcd at 167-68, paras. 318-19.

[73] *Id.*, 4 FCC Rcd at 145, para. 278.

[74] We do not intend in this proceeding to reconsider the conclusion of the *ESP Order* that some form of transitional "exemption" from access charges is warranted for ESPs, but only intend to examine whether we should revise the manner in which we implement this policy.

[75] *See supra* para 29, *infra* para. 33.

[76] *See* 47 U.S.C. § 152(b)(1).

[77] *BOC ONA Order*, 4 FCC Rcd at 169-70, para. 322.

[78] *Id.*, 4 FCC Rcd at 170, para. 322.

[79] *See generally ESP Order, supra*, note 70, 3 FCC Rcd at 2633. (Given the combined effects of impending ONA implementation and the entry of the BOCs into certain aspects of the information services market, a change in access charge rules relating to ESPs would be inappropriate.)

[80] The record compiled in Docket 87-215, which examined the ESP exemption, indicated that because there is significantly less enhanced service traffic than basic service traffic, the upward rate effect on basic service ratepayers caused by the exemption is probably small. *See ESP Order, supra* note 70, 3 FCC Rcd at 2632, para. 6. We ask parties to address this tentative finding and provide data on the magnitude of enhanced and basic interstate traffic and the effect of the exemption on interstate ratepayers, both currently and, to the extent feasible, over the next five years.

[81] The NTS costs of local subscriber lines are allocated to the interstate jurisdiction pursuant to a flat-rate allocator. A uniform 25% interstate basic allocation is currently being phased in for all study areas. C.F.R. § 36.154 (c), (d), (e).

[82] *See, e.g.*, 47 C.F.R. § 36.125.

[83] Under this alternative, and the percentage discount alternative discussed below, ESPs would not be allowed to take interstate access from state tariffs, as they are allowed to do under the current exemption.

[84] As stated *supra*, para. 34, traffic over "local" business lines is treated as intrastate for purposes of separating local exchange TS costs. A reclassification of ESP traffic would therefore increase the interstate revenue requirement for TS access elements.

[85] *See, e.g.*, Comments of Telenet Communications Corp., CC Docket No. 87-215, at 7-15, filed Sept. 24, 1987, and corrected Sept. 28, 1987.

[86] We note in this regard that our experience in implementing our access charge policies and reviewing access tariff support material demonstrates that demand for basic interstate services that use the local switched network (e.g., MTS, WATS, and similar services) is highly price elastic. Demand for these services has increased dramatically over the last few years in response to price decreases resulting in large part from reductions in LEC charges to IXCs for interstate switched access services. We have used a figure of -0.47 to approximate short-

term demand elasticity for switched services in evaluating the annual access tariff filings. *See generally* Annual 1989 Access Tariff Filings, DA 89-337, para. 624 (released Mar. 22, 1989).

[87] It appears doubtful that a discount could be computed that replicates the effect of local business line charges. Therefore, it could be difficult to determine the effect of a particular discount level upon ESP services.

[88] *See supra* paras. 29, 33.

[89] 47 C.F.R. § 69.2 (m).

[90] *Compare ESP Order, supra* note 70, 3 FCC Rcd at 2631 (rate shock provides basis for special treatment of ESPS) *with* Amendment of Part 69 of the Commission's Rules Relating to Private Networks and Private Line Users of the Local Exchange, 2 FCC Rcd 7441, (1987) *(Private Network Notice)* ("leaky PBX traffic" is traffic over lines connecting private network switches with the local exchange network that LECs are incapable of identifying as interstate). We realize that in practice this distinction between ESP traffic and "leaky PBX traffic" is often not as well-defined as suggested in the text. In some cases, access connections to an ESP node carry a combination of local exchange traffic and interexchange traffic (both intrastate and interstate), while access connections to a PBX that is part of an end user private network carry predominantly, if not exclusively, "leaked" interexchange traffic. Also, as we discuss *infra* note 92, in some circumstances it is difficult to distinguish between ESPs and private networks that incorporate "enhanced" functionalities. Nevertheless, despite these qualifications, we believe it is possible to distinguish between ESP and private network traffic in many cases, and accordingly, the differences in the policy rationales developed in previous access charge proceedings that underlie the non-application of access charges to the two types of traffic remain important. Thus, while it would not be a particularly difficult implementation problem to begin assessing access charges on major ESPs, such as the national VANs, we have decided not to do so for policy reasons.

[91] *Private Network Notice, supra* note 90.

[92] In many cases we believe it would not be difficult to identify ESPs because major ESPs are well-known and are actively offering services to the public. On the other hand, we recognize that there are circumstances in which differentiation between ESPs and end users with major private networks could be difficult. We also recognize that our present rules do not distinguish between ESPs and end users. Our experience in defining and implementing regulatory distinctions between carriers and ESPs suggests that while such difficult line-drawing is possible, it will likely engender controversy in the short term as the application of the rule to "gray area" situations becomes clarified. We invite parties that support one of the alternatives to the present ESP exemption to suggest specific criteria for differentiating between end users and ESPs or differentiating among end users for purposes of applying access charges.

[93] *BOC ONA Order,* 4 FCC Rcd at 145, para. 279.

[94] *See supra* para. 10; 47 C.F.R. § 36.125.

[95] *BOC ONA Order,* 4 FCC Rcd at 168-69, para. 320.

[96] Parties are, of course, free to propose other alternatives, but should support such alternatives fully and provide the information and analyses described in para. 47.

[97] *Phase I Order,* 104 FCC 2d at 1048-52, paras. 173-82.

[98] *Id.,* 104 FCC 2d at 1046, para. 171.

[99] *Phase I Further Reconsideration,* 3 FCC Rcd at 1141, para. 46. *See also Phase II Reconsideration,* 3 FCC Rcd at 1157, para. 49.

[100] *Phase I Reconsideration,* 2 FCC Rcd at 3068 n. 261.

[101] *BOC ONA Order,* 4 FCC Rcd at 176-77, para. 338.

[102] We stated, however, that price parity alone cannot ensure that basic service rates adequately reflect costs and promote efficiency, and restated our general policy that prices for ONA services are related to costs. *BOC ONA Order,* 4 FCC Rcd at 85 n. 326. *See also supra* n. 47.

[103] *Phase I Order,* 104 FCC 2d at 1042, para. 164. *See also BOC ONA Order,* 4 FCC Rcd at 78-89, paras. 150-72.

[104] The *BOC ONA Order* interpreted price parity to require that a BOC employing distance-sensitive pricing charge itself the rate for a distance of two miles from the serving central office as an initial mileage band. We required some BOCs to modify their "price parity" requirements to reflect this interpretation. *Id.,* 4 FCC Rcd at 86-87, para. 168.

[105] To the extent special ratemaking requirements should be applied to ONA services, parties are free to propose them, and we will consider such proposals in this Rule Making proceeding.

[106] 5 U.S.C. §§ 601-612. Because of the nature of local exchange access service, this Commission has previously determined that the formal provisions of the Regulatory Flexibility Act are not applicable to proceedings to adopt or revise access charge rules because local exchange carriers, the parties directly subject to the access charge rules, do not fall within the Act's definition of small entity. *Id.* § 601; 15 U.S.C. § 632. In this connection, we have concluded that small telephone companies are dominant in their fields of operations and therefore are not small entities as defined by the Regulatory Flexibility Act. *See* Third Report and Order, *supra* note 29, 93 FCC 2d at 338-39. Thus, this Commission is not required by the terms of that Act to apply the formal procedures set forth therein. We are nevertheless committed to reducing the regulatory burdens on small telephone companies whenever possible consistent with our other public interest responsibilities. Accordingly, we have chosen to utilize, on an informal basis, appropriate Regulatory Flexibility Act procedures to analyze the effect of proposed regulations on small telephone companies. *See* WATS-Related and Other Amendments of Part 69, Memorandum Opinion and Order, para. 29, CC Docket No. 86-1 (released Jan. 15, 1987), *summarized* in 52 Fed. Reg. 8258 (Mar. 17, 1987). We will also informally consider the effects of rule changes on ESPs, PBX users and other end users, some of which are small businesses. *See generally* Mid-Tex Electric Cooperative, Inc. v. FERC, 773 F. 2d 327, 342-43 (D.C. Cir. 1985), *further appeal,* 822 F.2d 1123 (D.C. Cir. 1987); Third Report and Order, 93 FCC 2d at 338 (the Regulatory Flexibility Act is designed to protect small businesses that are directly subject to administrative rules rather than businesses that are indirectly affected by the results that any rules will produce.)

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

INTERCONTINENTAL COMMUNICATIONS/ CELLULAR, INC. File No. 00253-CL-TC-1-88

For Commission Consent to Transfer of Control of the Saginaw-Bay City-Midland, Michigan MSA Non-Wireline Cellular Permit to PacTel Cellular of Saginaw, Inc.

MEMORANDUM OPINION AND ORDER

Adopted: April 28, 1989; Released: May 8, 1989

By the Acting Chief, Mobile Services Division:

1. Intercontinental Communications/Cellular, Inc. (Intercontinental) has filed an application for transfer of control of the cellular construction authorization for the Saginaw-Bay City-Midland, Michigan Metropolitan Service Area (Saginaw MSA) on Frequency Block A to PacTel Cellular of Saginaw, Inc. (PacTel). After initial review of the transfer application, the MSD determined that it was acceptable for filing.[1] Saginaw Mobile Telephone Systems (SMTS) filed a Petition to Deny the transfer application. Intercontinental and PacTel each filed oppositions to the petition, and SMTS filed a reply.

2. In its petition, SMTS argued that the Commission should not act on Intercontinental's transfer of control application until the Commission acted on the Application for Review filed by SMTS concerning the grant of a construction authorization for the Saginaw MSA to Intercontinental.

3. In *Intercontinental Communications / Cellular Inc.*, FCC 89-100 (released April 5, 1989), the Commission denied SMTS's Application for Review and reaffirmed the grant of Intercontinental's cellular application for the Saginaw MSA. Consequently, SMTS's Petition to Deny is now moot. Moreover, we have examined the application for transfer of control and find that Pactel is qualified to be a Commission licensee. We conclude that a grant of this application would be in the public interest.

4. Accordingly, IT IS ORDERED that the Petition to Deny filed by Saginaw Mobile Telephone Systems IS DENIED.

5. IT IS FURTHER ORDERED, pursuant to Section 0.291 of the Rules, that the application of Intercontinental Communications/Cellular, Inc. for transfer of control, File No. 00253-CL-TC-1-88, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Acting Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTE

[1] Public Notice, Report No. CL-88-35, released December 1, 1987.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

MODOC RSA LIMITED PARTNERSHIP — File No. 10014-CL-P-337-B-88

For a construction permit to
establish a new cellular system
to operate on frequency block B
in the Domestic Public Cellular
Radio Telecommunications Service
to serve the California 2--Modoc
Rural Service Area

MEMORANDUM OPINION AND ORDER

Adopted: April 28, 1989; Released: May 8, 1989

By the Acting Chief, Mobile Services Division:

1. We have before us for consideration: (a) the above-captioned application and (b) a request for waiver of the anti-alienation provisions of Section 22.922 of the Commission's Rules filed by CP National Corporation (National), which is currently a 25 percent limited partner in the applicant.

2. On October 7, 1988, National won the wireline cellular radio lottery for Market No. 337, California 2-Modoc. National is a wireline local exchange carrier. National also has interests in cellular and other radio common carrier businesses. Pursuant to a pre-lottery settlement agreement, National entered into a partnership agreement with three other wireline applicants for Market No. 337. A copy of this agreement was filed with the Commission on December 7, 1988. The new partnership, which is Modoc RSA Limited Partnership, has been substituted for National as the tentative selectee. National is now a limited partner owning a 25 percent interest in that partnership. In September 1988, National informed the Commission that National had reached an agreement in principal which contemplated National's entire business being merged into a wholly-owned subsidiary of ALLTEL Corporation (ALLTEL). As a result of this merger, National would become a wholly-owned subsidiary of ALLTEL. On December 30, 1988, following the Commission's approval of National's assignment of certain FCC radio authorizations to ALLTEL, this merger of all of National's holdings with ALLTEL was consummated. Since National's 25% interest in the tentative selectee for Market No. 337 has undergone an ownership change (*i.e.*, it is ultimately owned by ALLTEL), National now requests a waiver of the anti-alienation provisions of Section 22.922 of the Commission's Rules.[1]

3. Section 22.922 of the Commission's Rules prohibits the alienation of any interest in an RSA application prior to the grant of a construction authorization. Accordingly, the above-referenced transfer of National's interest in the wireline selectee for Market 337 to ALLTEL constitutes a technical violation of Section 22.922 of the Rules. Section 22.922 of the Rules was adopted to minimize speculation in applications and to eliminate any unnecessary delays in the implementation of service to the public. *See Amendment of the Commission's Rules for Rural Cellular Service, Third Report and Order*, 64 Rad.Reg.2d (P&F) 1382 (1988). The circumstances of the instant transfer do not evidence that the application was filed with intent to speculate in RSA applications. Nor will approval of this waiver delay service to the public. The transfer did not result in any change of control in the Partnership which is the tentative selectee; indeed, ALLTEL's acquisition of National's rights in the instant application is only incidental to a larger corporate merger involving radio and wireline facilities. Thus, the transfer of ownership in this case will not thwart the goals which the Commission wished to achieve when it adopted the anti-alienation rule. Therefore, in the circumstances of this case, we hereby waive the anti-alienation provisions of Section 22.922 of the Commission's Rules with respect to the transfer by National of interests in RSA applications to ALLTEL.

4. In addition, we find Modoc RSA Limited Partnership to be legally, technically and otherwise qualified to construct and operate the proposed cellular system and that granting the instant application would serve the public interest, convenience and necessity.

5. Accordingly, IT IS ORDERED that the application (File No. 10014-CL-P-337-B-88) of Modoc RSA Limited Partnership IS GRANTED. This authorization does not include the right to any interference protection in any areas outside the California 2--Modoc RSA and is also conditioned upon coordinating with the current or future co-channel licensee(s) in the areas outside the RSA. The licensee herein is put on notice that in the event current or future MSA/RSA licensees encounter interference from any extensions, the licensee herein will have to change frequencies in those cells or pull back its 39 dbu contours to eliminate any interference due to an extension.

6. IT IS FURTHER ORDERED that all non-wireline cellular applications in the California 2--Modoc RSA, other than the application of Modoc RSA Limited Partnership, ARE HEREBY DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Acting Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTE

[1] National also requested waiver of the Commission's "cut-off" procedures. (Any cellular application for a new system filed after the relevant filing period for a particular market is not accepted for filing; *i.e.*, the application is "cut-off" from participation in the lottery for that market.) Such a waiver would be necessary if the tentative selectee's application had undergone a substantial change in ownership pursuant to Section 22.23(c)(4) of the Rules and was therefore considered to be a newly filed application pursuant to Section 22.23(g) of the Rules. Since National became a 25 percent limited partner in the tentative

selectee prior to National's merger with ALLTEL, the tentative selectee did not undergo a substantial change in ownership as a result of that merger. Thus, no waiver of the "cut-off" procedures is required.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

SOUTHERN NEW ENGLAND TELEPHONE COMPANY — Transmittal Nos. 458 and 461

Revisions to
Tariff F.C.C. No. 39

ORDER

Adopted: April 27, 1989; Released: May 2, 1989

By the Chief, Common Carrier Bureau:

1. On February 2, 1989, the Southern New England Telephone Company (SNET) filed Transmittal 458, which revised its Tariff F.C.C. No. 39 to implement pay telephone presubscription. Petitions opposing Transmittal 458 were filed on February 17 by National Telephone Services (NTS), the Operator Service Providers of America (OSPA), and International Telecharge, Incorporated (ITI). SNET replied to these petitions on February 29. On March 23, the Connecticut Office of Consumer Counsel (Connecticut OCC) filed a petition to reject or suspend SNET Transmittal 461, which made revisions in the pending proposal and deferred the effective date of the tariff. SNET replied on April 11. The tariff is scheduled to become effective on May 3, 1989.

2. The issues raised by NTS, OSPA, and ITI regarding interexchange carrier (IC) restrictions proposed by SNET were mooted by the *BOC Payphone Order*.[1] Connecticut OCC, however, addresses matters not directly resolved by that Order. Connecticut OCC questions whether, if SNET serves as the billing agent for the IC, the local service of a customer who fails to pay a disputed bill for a call placed through a presubscribed payphone will be terminated. Connecticut OCC Petition at 3-4. SNET replies that state regulations prohibit the termination of local service if a bill is in dispute. SNET also notes that it does not terminate any customer's local exchange service for non-payment of alternative operator service (AOS) charges, and that it thoroughly investigates billing disputes. SNET Reply at 6.

3. Connecticut OCC also asserts that SNET's tariff fails to indicate whether SNET will act as billing agent for the participating ICs. Connecticut OCC Petition at 5. SNET replies that because interstate billing and collection services have been detariffed, it would not be appropriate for SNET to include billing agent provisions in its interstate tariff. SNET Reply at 7. In addition, Connecticut OCC argues that little is known about service quality, performance, or customer service policies of most of the ICs on the presubscription ballot. Connecticut OCC Petition at 6. SNET replies that its tariff permits it to discontinue or refuse access service to customers who use that service for abusive or unlawful purposes, and notes that aggrieved customers can use the Commission's complaint process. SNET Reply at 7.

4. The Common Carrier Bureau has reviewed the tariff transmittals, the Descriptions and Justifications supporting them, and the pleadings. We find that no compelling argument has been presented that the tariff revisions filed by SNET are patently unlawful so as to require rejection or that the revisions warrant investigation at this time.

5. IT IS THEREFORE ORDERED that the petitions filed against Southern New England Telephone Company Tariff F.C.C. No. 39, Transmittal Nos. 458 and 461 by National Telephone Services, the Operator Service Providers of America, International Telecharge, Incorporated, and the Connecticut Office of Consumer Counsel ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTE

[1] Pay Telephone Presubscription, 4 FCC Rcd 2782 (1989) (*BOC Payphone Order*). The *BOC Payphone Order* rejected several carriers' pay telephone tariff transmittals due to the transmittals' proposed imposition of various restrictions applicable to the use of access services by participating ICs. Such restrictions included pricing limitations, calling card acceptance requirements, service quality standards, and other provisions which the Bureau concluded should not be included in a tariff. As a result of that Order, SNET filed Transmittal 461 to delete from its proposed tariff restrictions which the Bureau rejected in the *BOC Payphone Order*.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: May 1, 1989

Commissioner Patricia Diaz Dennis releases separate statement in Memorandum Opinion and Order, FCC 89-5, released February 14, 1989, 4 FCC Rcd 1532.

SEPARATE STATEMENT OF COMMISSIONER PATRICIA DIAZ DENNIS

RE: RKO General, Inc.

I concur in the result. I would have preferred to follow the plan the Commission announced in 1985, to complete consideration of Phase I (concerning RKO's qualifications) before reviewing the partial initial decisions on the applicants' comparative qualifications. RKO General, Inc., 100 FCC 2d 464 (1985). Nevertheless, the Commission--despite my dissent--decided last year to approve settlements even though we have not ruled on RKO's basic qualifications. *RKO General, Inc.*, 3 FCC Rcd 5057 (1988). In light of that decision, it now makes administrative sense to authorize the filing of applications for review of the partial initial decisions. Our prompt review of the initial decisions could contribute to resolving the remaining contested proceedings.

I continue to believe, however, that we are obligated to reach a decision on RKO's basic qualifications. A year has passed since the oral argument in Phase I; the time has long since come for the Commission to resolve the case.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

The Public Service Commission of Maryland
and Maryland People's Counsel
Applications for Review of a
Memorandum Opinion and Order
By the Chief, Common Carrier Bureau
Denying
The Public Service Commission of Maryland
Petition for Declaratory Ruling Regarding
Billing and Collection Services

The Public Utilities Commission of
New Hampshire Petition for Rule Making
Regarding Billing and Collection Services

MEMORANDUM OPINION & ORDER

Adopted: April 14, 1989; Released: May 10, 1989

By the Commission:

I. INTRODUCTION

1. On May 5, 1987, the Maryland Public Service Commission (Maryland) and the Maryland People's Counsel (the People's Counsel) filed applications for review asking us to reverse a decision by the Chief of the Common Carrier Bureau (the Bureau) that denied a petition for declaratory ruling filed by Maryland (the *Bureau Order*). [1] In that order, the Bureau denied Maryland's petition for a declaratory ruling on these matters on the ground that it was an untimely request for reconsideration of issues that we had previously decided in the *Detariffing Order* in CC Docket No. 85-88.[2] The *Bureau Order* also declined to construe the Maryland petition as a petition for Rule Making. The Public Utilities Commission of New Hampshire (New Hampshire) filed comments supporting the application for review. New Hampshire describes its comments as petitioning in the alternative that this Commission initiate a new Rule Making. In this order, we affirm the *Bureau Order* and dismiss the New Hampshire petition for Rule Making.

II. BACKGROUND

A. Billing and Collection

2. Prior to the AT&T divestiture, local exchange carriers (LECs) performed the billing and collection of subscriber charges for both local telephone service and long-distance toll calling carried over AT&T's network. Salaries, expenses, and equipment costs for billing and collection were duly apportioned between the interstate and intrastate jurisdictions on the basis of "separations" standards.[3] The portion of billing and collection costs allocated to interstate services was included in the toll rates in AT&T's interstate tariffs.

3. For long-overdue customer accounts, the telephone companies would cease extending credit to the delinquent customer by disconnecting the subscriber's line, a procedure known as disconnection for nonpayment (DNP). In deciding when to disconnect, the LECs did not draw any distinction between nonpayment for local, intrastate toll, or interstate toll service. The AT&T-owned Bell Operating Companies (the BOCs) treated nonpayment for AT&T's long distance services identically to nonpayment for their local services. The independent telephone companies, pursuant to individual settlement contracts with AT&T, typically followed the same approach in dealing with customers who did not pay their bills.[4]

4. After AT&T divested the BOCs,[5] this Commission questioned whether the LECs should continue terminating local service as a means of enforcing payment of interstate long distance bills. We recognized, however, that this practice might be unavoidable for practical reasons.[6] Accordingly, we instructed the BOCs to submit technical justification for such DNP practices by showing what operational constraints, if any, would prevent LECs from separately terminating interstate service.[7] We also temporarily allowed carriers to disconnect local service for nonpayment of interstate bills subject to approval by state authorities, but we required carriers to delete any references to disconnection of local service from their interstate tariffs.[8]

5. Two state regulatory commissions subsequently attempted to regulate the rates LECs charged for interstate DNP.[9] AT&T challenged those actions in federal district courts.[10] After this Commission submitted *amicus* briefs describing the scope of our deference to state authority, both courts held that DNP performed by LECs for interstate carriers is an interstate service subject to this Commission's jurisdiction. Those courts also held that this Commission had properly adopted only a partial deferral to state authority, by authorizing the states to determine whether or not DNP could be offered to interstate carriers by LECs but not what price could be charged for it.

B. Detariffing Order

6. In the *Detariffing Order*, we held that billing and collecting performed by a LEC for an unaffiliated interexchange carrier (EXC) such as MCI, US Sprint, or the post-divestiture AT&T, is not subject to common carrier regulation under Title II of the Communications Act of 1934 (the Act), but is subject to this Commission's ancillary jurisdiction under Title I of the Act. We noted that billing and collecting performed for third parties by non-communications entities, such as credit card companies, has not been subject to regulation by this Commission or indeed, to our knowledge, to regulation by any other public utility agency.[11]

7. In holding that LEC billing and collection for interstate carriers does not fall within our Title II jurisdiction, we found that this service is neither common carriage nor a communication service for purposes of Title II.[12] However, we concluded that such service is incidental to communications for purposes of our Title I jurisdiction. Noting the existence and potential entry of competitive alternatives that should force the LECs to charge reason-

able prices, we concluded that federal tariff regulation of LEC billing and collecting for interstate carriers should end on January 1, 1987.[13]

8. Having removed in the *Detariffing Order* federal tariff regulation of LEC provision of billing and collection services for carriers providing interstate services, we also preempted the states from regulating such services, citing as precedent our prior decisions to preempt state regulation of special mobile radio systems, enhanced services, and customer premises equipment (CPE).[14] We concluded that state regulation of billing and collection for interstate carriers could adversely affect prices in this competitive market in ways that would impede the achievement of the goals of the Act.[15]

9. In petitioning for reconsideration of the *Detariffing Order*, Southwestern Bell Telephone Company requested that we clarify our preemption of state regulation.[16] According to Southwestern Bell, it cannot be an effective competitor in the market for billing and collection service unless it can structure and price its offerings consistently in both intrastate and interstate jurisdictions. Southwestern Bell requested that if we did not intend to preempt all state regulation of billing and collection, we allow it additional time before detariffing interstate billing and collection to seek relief from its state commissions. We denied that request, stating that "[o]ur Order did not discuss federal preemption of *intrastate* billing and collection services, and the record in this proceeding to date does not support such preemption."[17] In the *Joint Cost Order*,[18] we subsequently decided to maintain mechanisms that facilitate continued state regulation of intrastate billing and collection in an environment in which interstate billing and collection has been deregulated. We concluded that we should continue to apply the jurisdictional separations process to billing and collecting service costs, thereby identifying investment and expenses that are properly attributable to intrastate activities and subject to state regulatory authority.[19] Thus, we repeatedly made clear that we were not preempting state authority over billing and collection services performed for intrastate carriers.

10. In the *Detariffing Order*, we decided to continue to defer to state regulatory authorities in determining whether or not LECs should be permitted to offer disconnection of local service as part of their billing and collection service for interstate carriers.[20] We examined the possibility of prohibiting the LECs from disconnecting local service as a means of inducing customers to pay interstate bills, so that, if a customer failed to pay only its interstate bill, a LEC would only be permitted to block the customer's access to interstate service. However, we concluded that practical considerations weighed in favor of retaining our existing deference to the states in this area.[21] We emphasized that, to the extent that states do permit LECs to disconnect local service as part of their billing and collection for interstate carriers, we would continue treating such DNP as an interstate service that will be free of rate regulation. On the basis of that finding, we decided not to permit state rate regulation of such interstate DNP.

C. The Bureau Order

11. In April 1986, AT&T filed a complaint asking a federal district court to enforce the *Detariffing Order* against Maryland, which apparently was attempting to regulate the rates that the Chesapeake & Potomac Telephone Company of Maryland (C&P) was charging AT&T for the provision of billing and collection, including DNP, for AT&T's interstate services.[22] Maryland responded in June 1986, by filing a petition for declaratory ruling with this Commission that requested us to hold that state regulatory commissions have sole authority to set the rates charged by LECs for billing and collection services, including DNP.[23] Maryland argued that we should consider the effect of the Supreme Court's decision in *Louisiana Public Service Commission v. FCC*.[24] That decision had been issued the previous month.[25]

12. In April 1987, the Bureau, acting on delegated authority, released the *Bureau Order*, which, although holding that Maryland's petition was an untimely request for reconsideration of the *Detariffing Order*, addressed briefly several substantive issues regarding the preemption of LEC billing and collection for interstate services of another carrier. Analogizing the preemption of billing and collection in the *Detariffing Order* to preemptive actions of this Commission in the *Computer II* decision and the more recent *Inside Wiring Reconsideration*,[26] the Bureau stated that this Commission has already determined that the *Louisiana* decision does not preclude this Commission from exercising its power to "preempt state regulation of activities that are not classified as communications services for Title II purposes."[27] Moreover, the Bureau concluded that this Commission has jurisdiction to preempt DNP on the ground that DNP is incidental to interstate communications since disconnection of a subscriber line severs access to all long distance services.[28]

III. POSITIONS OF THE PARTIES

A. Applications for Review

13. On May 5, 1987, Maryland and the People's Counsel filed applications for review of the *Bureau Order*. The Maryland application, which the People's Counsel essentially seconds, asks us to find that: (a) billing and collection is not generally subject to this Commission's jurisdiction; (b) DNP in particular is not subject to our jurisdiction; and (c) the costs of LEC billing and collection services should not be subject to the jurisdictional separations process.[29]

14. As a preliminary matter, Maryland argues that we should address its petition on its merits rather than dismissing it on procedural grounds, as the *Bureau Order* did, as an untimely request for reconsideration of the *Detariffing Order*. Maryland contends that, in the proceeding that culminated in the *Detariffing Order*, no party raised the question whether this Commission has the authority to regulate the billing and collection services provided by LECs to interstate carriers. It further notes that no party to that proceeding argued, in particular, that this Commission lacks authority to regulate DNP; instead, the parties simply maintained that we should defer to state regulation of DNP as a matter of policy. Maryland states that it was moved to seek redress from this Commission because a private party, AT&T, has asked a federal court to enforce the *Detariffing Order* against it even though Maryland was not a party to the proceeding that led to the *Detariffing Order*. Finally, it argues that the jurisdictional issues raised by the preemptive actions taken in the *Detariffing Order* should be reexamined in light of the Supreme Court's *Louisiana* decision, which was issued after that order was adopted.

15. On the merits of its application, Maryland argues that the terms of the Modification of Final Judgment (MFJ) in *U. S. v. AT & T* [30] have changed the nature of billing and collection services performed by LECs for interstate carriers. Prior to the divestiture, it says, LECs either were subsidiaries of AT&T or jointly provided interstate communication with AT&T on a "partnership basis."[31] Under either of these arrangements, the LECs undertook the billing and collection function and, in return, received a share of the revenue from interstate telephone calls. According to Maryland, the billing, collection, and DNP performed by the LECs were considered to be an incidental part of the provision of interstate communications, subject to this Commission's jurisdiction under Title II of the Act.

16. Since divestiture, Maryland claims, the LECs have not been providing interstate communications service to end users as subsidiaries or partners of AT&T and, accordingly, the billing and collection services LECs provide interexchange carriers are no longer incidental to any LEC interstate services. Thus, Maryland argues, billing and collection conducted by LECs for third-party interstate carriers is not an incidental part of a communications service for purposes of either Title I or Title II. Maryland notes that this Commission questioned whether we could exercise jurisdiction over such firms as credit card companies that provide billing and collection services to interstate carriers, and that we characterized billing and collection by LECs for such carriers as a financial and administrative service similar to those provided by credit card companies. Maryland argues that the proper view is that this Commission has jurisdiction over neither activity.

17. Maryland also contends that this Commission is prohibited from asserting jurisdiction over DNP by Section 2(b)(1) of the Act,[32] which provides that "nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier . . . ."[33] Maryland challenges our holding, stated in the *Inside Wiring Reconsideration* and cited in the *Bureau Order*, that Section 2(b)(1) only relates to jurisdiction over intrastate common carrier communications services.[34] According to Maryland, Section 2(b)(1) also restricts this Commission from matters "in connection with" intrastate common carrier communications, and LEC DNP for interstate services falls into that category. Maryland seeks to distinguish the *CCIA* decision, which upheld our actions in *Computer II* that both detariffed customer premises equipment and preempted the states from imposing any regulation on CPE. Maryland argues that the court's decision in *CCIA* was based on its view that the interstate sector has the dominant interest in CPE used jointly in connection with both interstate and intrastate communications. Maryland claims that DNP is different because it is, in essence, local service termination that LECs are offering to other carriers as leverage for collecting unpaid bills. That, Maryland contends, should give the states exclusive authority to determine what prices the LECs may charge for that service.

18. Finally, Maryland argues that the jurisdictional separations process should not be applied to LEC billing and collection in general or DNP in particular. It claims that jurisdictional separations can properly be applied only to services or equipment that fall under joint federal and state jurisdiction. For the reasons stated above, Maryland maintains that billing and collection, including DNP, fall exclusively under state jurisdiction.

19. In its application for review, the People's Counsel finds it "amazing" that the *Bureau Order* held billing and collection to be incidental to interstate communications, "especially in light of the Commission's simultaneous characterization of these services as 'financial and administrative' in nature."[35] According to the People's Counsel, the fact that LECs provide DNP cannot be used to distinguish their service from billing and collection services provided by other vendors because companies that provide no communications services whatsoever employ collection devices equivalent to DNP. The People's Counsel thus contends that neither LEC nor non-LEC billing and collection services are within this Commission's jurisdiction.

B. Petition for Rule Making

20. As noted above, New Hampshire filed comments that support Maryland's application for review and petitioned in the alternative that this Commission initiate a new Rule Making proceeding. New Hampshire contends that our deregulation of billing and collection deprives it and other state regulators of information necessary to prevent the LECs from attempting to monopolize the billing and collection business by engaging in predatory pricing through the use of cross-subsidies generated from intrastate telephone revenues.[36] In particular, New Hampshire claims that the *Detariffing Order* has caused a "loss of control" over information related to equipment used jointly for intrastate and interstate billing and collection.[37] According to New Hampshire, this Commission has thereby frustrated the goals of the Act. New Hampshire also argues that, in adopting the *Detariffing Order*, we failed to meet minimum evidentiary standards because we did not produce a number of required quantitative analyses, including computations of percentage market shares and cross-elasticities of demand. New Hampshire, therefore, asks us to reexamine the economic rationale behind the *Detariffing Order*.

C. Comments

1. Comments Supporting the Application

21. The National Association of Regulatory Utility Commissioners (NARUC), the Office of the People's Counsel of the District of Columbia (DCPC), and the Public Service Commissions of Michigan (Michigan) and Wyoming (Wyoming) filed comments supporting the Maryland application.[38]

22. In general, the comments that support Maryland reiterate its arguments while providing some additional facts and arguments. NARUC characterizes the MFJ as restricting the BOCs from providing interstate telephone service.[39] It argues that since the LECs do not provide interstate service, any billing and collection that they perform cannot be deemed incidental to interstate communications for purposes of Title I of the Act. The DCPC states that Sears and American Express are providing billing and collection for interstate carriers and argues that their services are indistinguishable from the billing and collection services provided interstate carriers by C&P Telephone of the District of Columbia. An attachment

submitted by DCPC also contains a C&P statement that "[a]ny number of large retail credit organizations are potential competitors in the billing and collection service market."[40] Michigan essentially restates Maryland's arguments, while Wyoming quotes a 1984 Order in which this Commission stated that, following divestiture, local and interexchange services are no longer provided by the same companies and that "the service by an [interexchange carrier] is now unrelated to a customer's local service."[41] According to Wyoming, it is inconsistent for this Commission now to hold that LEC-provided DNP is incidental to the provision of "unrelated" interexchange carrier services.

2. Comments Opposing the Application

23. AT&T, Bell Atlantic, and MCI filed comments opposing the application.

24. Bell Atlantic argues that the Bureau correctly found that Maryland's petition for declaratory ruling was, in effect, an untimely petition for reconsideration of the *Detariffing Order*, and, accordingly, its application for review should be denied on procedural grounds. Maryland's complaint that it was not a party to the *Detariffing Order* proceeding has no merit because that proceeding was instituted by a Notice of Proposed Rule Making that invited comments by any interested parties. Bell Atlantic notes that copies of the *Detariffing Order* were served on all state commissions, including Maryland. Bell Atlantic further contends that, under Maryland's interpretation of the *Louisiana* decision and the restriction of Section 2(b)(1) on our jurisdiction over matters "in connection with" intrastate service, this Commission's authority would be limited to facilities used exclusively for interstate service. According to Bell Atlantic, Congress recognized that telephone company facilities and personnel were often jointly used in the provision of interstate and intrastate services and prescribed the separations process of Sections 221 and 410(c) of the Act as the means of determining the portions of the associated investment and expense that should be allocated to each jurisdiction. Bell Atlantic argues that Maryland's jurisdictional claims lack merit whether or not one assumes that separations can feasibly be applied to billing and collection. Construing Maryland's application as implying that DNP cannot be separated into interstate and intrastate components, Bell Atlantic claims that Maryland is overlooking a footnote in *Louisiana* stating that this Commission may preempt state regulation in cases where it is " *not* possible to separate the interstate and intrastate components of the asserted FCC regulation."[42] Bell Atlantic further notes that one of C&P's Maryland state tariffs, filed to comply with a Maryland order, imposes a separate charge for DNP performed in connection with interstate communications, while other tariffs filed with Maryland provide for compensation for DNP performed for nonpayment of intrastate charges.

25. In opposing Maryland's application, AT&T argues that the divestiture's alteration of relationships between it and the LECs did not change the jurisdictional nature of billing and collection services. According to AT&T, jurisdiction is determined by the "nature of the communication,"[43] not the corporate affiliation of a carrier or the location of the technology at issue. AT&T also argues that the *Louisiana* decision is inapposite to the issues presented in Maryland's application because *Louisiana* addressed an attempt by this Commission to preempt state authority over depreciation of intrastate investment used in providing intrastate service. In contrast, AT&T argues, billing and collection for interstate carriers is an interstate service, pure and simple. AT&T contends that the Court in *Louisiana* explained the proper procedure for "distinguishing interstate from intrastate 'spheres of regulation' ...": rely on jurisdictional separations using the joint board advisory process prescribed in Section 410(c) of the Act.[44] AT&T claims that, in attempting to compel C&P to exact an additional charge for DNP when the investment and expense underlying that service have already been assigned to the interstate jurisdiction, Maryland is clearly crossing the jurisdictional line identified by the Court.

26. MCI argues that the LECs' ability to offer DNP is a crucial point of distinction between their billing and collection services and those performed by outside vendors. According to MCI, DNP is incidental to interstate communications because it disconnects interstate as well as local service.[45] MCI states that LECs do not now deny a delinquent subscriber access only to the toll network without denying a dialtone altogether; unless and until exchange carriers begin offering toll denial separately, interstate and intrastate DNP will be unsevered and indivisible, and therefore wholly subject to this Commission's jurisdiction.[46]

3. Replies

27. In its reply, Maryland concedes that the DNP service of the LECs affects interstate communications but argues that, because the LECs are not involved in interstate communications, their DNP is not incidental to interstate communications. According to Maryland, the fact that only LECs can provide DNP as part of their billing and collection services does not alter their basic nature as financial and administrative services. Maryland argues that Title I of the Act clearly does not give this Commission authority to regulate all third-party services provided to interstate carriers that are used to conduct their interstate operations. Maryland contends that the LECs are similar to other third-party vendors catering to interstate carriers in that the billing and collection services that the LECs perform are not incidental to any interstate communications operations of the LECs themselves.

28. The People's Counsel contends in its reply[47] that billing and collection is not properly subject to the jurisdictional separations process because the service is not employed to produce or deliver interstate service, only to obtain payment for interstate service that has already been produced and delivered.[48]

IV. DISCUSSION

A. Procedural Matters

29. Initially, we note our agreement with the holding in the *Bureau Order* that Maryland's initial pleading was mislabeled and could be dismissed as an inappropriate request for declaratory relief. Our rules do not provide a complete description of the nature and function of a declaratory ruling. Section 1.2[49] merely states:

> The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.

30. This Commission envisioned that the procedure could be used to resolve controversies between carriers and their customers or controversies among carriers relating to their rights or duties under the Communications Act, under this Commission's rules, or under prior Commission orders. A state commission may also invoke this procedure to resolve a controversy with a carrier. An interested person who believes an unambiguous Commission decision is incorrect, however, should either file a timely petition for reconsideration with this Commission or a timely appeal or petition for review with an appropriate Court of Appeals. Such persons should not attempt to use a petition for declaratory ruling as a substitute for a petition for reconsideration.

31. The Bureau did not rest its decision solely on the grounds that Maryland is not procedurally entitled to declaratory relief. The Bureau said that it would be possible to construe the Maryland pleading as a petition for Rule Making. Maryland could have asked this Commission to initiate a new Rule Making proceeding to determine whether the preemption of state rate regulation should be revoked in whole or in part. The Bureau declined to process the Maryland pleading as a Rule Making petition because the Bureau concluded that Maryland has not presented any argument that would lead us to initiate a new Rule Making. As we explain below, that Bureau conclusion is correct. Therefore, we affirm the Bureau decision insofar as the *Bureau Order* dismisses or denies a petition for Rule Making.

32. We note that Maryland is not only asking us to reexamine our preemption decision in the *Detariffing Order*, but is also asking us to reexamine the decision to include costs attributable to billing and collection for other carriers in the jurisdictional separations process. That question had been raised in petitions for reconsideration of the *Joint Cost Order* before Maryland filed its application for review of the *Bureau Order*. Maryland could have expressed its views in the appropriate proceeding. We have now reaffirmed our decision to include these billing and collection costs in the regulated category for separations purposes.[50] We see no reason to reexamine that question again.

33. Maryland's declaratory ruling petition was based in part upon the argument that the preemption decision should be reexamined in light of the *Louisiana* decision, which was issued shortly before Maryland filed its petition. The Bureau correctly noted that we did examine the effect of *Louisiana* in two decisions that were adopted between the date of release of the *Bureau Order* and the filing of the Maryland petition.[51] Those decisions rejected arguments relating to the effect of Section 2(b)(1) and *Louisiana* that are, essentially, the same as Maryland's arguments. No useful purpose would be served by initiating a new Rule Making to examine the same basic question for the third time. In any event, as discussed below in paragraph 47, the services in question are interstate, not intrastate, and Section 2(b)(1) and *Louisiana* are thus inapplicable.

34. Maryland also contends that we should reexamine the decision to preempt because it believes that neither DNP nor any LEC billing and collection for interstate telecommunications services of other carriers falls within the scope of our ancillary powers under Title I of the Act. This argument is not based upon any new developments that occurred after the time expired for petitions for reconsideration of the *Detariffing Order*, and Maryland has not attempted to explain its failure to present these views in a more timely manner. We agree with the Bureau's conclusions that Maryland's Title I argument does not have sufficient merit to warrant initiating a new Rule Making. We have decided, however, that it would be desirable to amplify and clarify our reasons for reaching that conclusion.

B. Jurisdiction

35. Maryland's challenge to our preemptive deregulation of interstate billing and collection services is based largely on two contentions: that (a) the billing and collection services performed by C&P for interexchange carriers (IXCs) are not incidental to interstate communications and therefore are not subject to our jurisdiction at all; and (b) even if such services are incidental to interstate communications, Section 2(b)(1) of the Communications Act prohibits us from preempting state regulation of such services. We reject these arguments and hold that we do have jurisdiction to take the preemptive deregulatory actions Maryland that challenges. We deal with each of Maryland's arguments in turn.

36. For purposes of analyzing Maryland's first argument there are two relevant jurisdictional boundaries: (1) the boundary between our Title II jurisdiction (regulation of entry and rates charged by interstate communications common carriers) and our Title I "ancillary" jurisdiction; and (2) the boundary between our Title I jurisdiction and services that fall entirely outside our jurisdiction. The *Detariffing Order* found that interstate billing and collection services offered by LECs to IXCs are not common carrier services subject to our Title II jurisdiction. However, we also found that such services are "incidental" to interstate transmission services and subject to our Title I jurisdiction. Maryland agrees with the first finding, but challenges the second. Thus, Maryland argues that not only are interstate billing and collection services outside our Title II jurisdiction, they are also outside our Title I jurisdiction and are not subject to any exercise of federal regulatory authority under the Communications Act.

37. Maryland bases this argument on its view of the billing and collection services that C&P provides to IXCs as "financial and administrative services" that are "not connected with the actual transmission of electrical communications,"[52] and thus are not "incidental"[53] to wire and radio transmission for purposes of our Title I jurisdiction.[54] Maryland also argues that, historically, billing and collection services have been subject to our jurisdiction only when offered by the provider of the interstate transmission service for which the customer is being billed.[55] Accordingly, Maryland argues, because C&P itself does not provide the interstate transmission service for which it bills and collects payment from the public,[56] this Commission can have no ancillary jurisdiction over billing and collection services that C&P performs for interstate carriers with whom it has no corporate affiliation, and no authority, therefore, to preempt state regulation of such services. We disagree with Maryland's characterization of our Title I authority and of the role of billing and collection, as provided by LECs to IXCs, in interstate communication.

38. Section 2(a) of the Act provides this Commission with broad jurisdiction over all "interstate communication . . . by wire or radio . . . .," which Sections 3(a) and (b) define as including not only the transmission of information, but "all instrumentalities, facilities, apparatus,

and services . . . incidental to such transmission."[57] The Supreme Court has clearly established that Section 2(a) is a substantive grant of jurisdiction[58] and not merely a description of the forms of communication to which the Act's other provisions governing common carriers (Title II of the Act) and broadcasters (Title III of the Act) apply. Thus, it is well settled that this Commission may assert Title I jurisdiction over activities that are not within the reach of Title II, but that are within the scope of our broad authority granted in Section 2(a) over "interstate communication," provided that our exercise of jurisdiction is "necessary to ensure the achievement of [our] . . . statutory responsibilities."[59] Furthermore, it is clear that we can invoke this Title I jurisdiction to preempt state regulation that conflicts with, and would effectively undermine the achievement of, federal policies.[60] Thus, we must decide whether, in taking our previous actions regarding billing and collection, we properly had Title I jurisdiction over such services, and whether we met the applicable standards in exercising that jurisdiction when we preempted state regulation of such services.[61]

39. In arguing that because billing and collection services are "financial and administrative services," they are not subject to our Title I jurisdiction, Maryland states incorrect criteria for determining the applicability of that jurisdiction. We noted in the *Inside Wiring Reconsideration* that generally, we have invoked our Title I jurisdiction to preempt state regulation of non-Title II activities only when such activities "affect the provision of interstate services" and are "closely related to the provision of [such] services."[62] Such activities are "incidental" to interstate communications services for purposes of Section 3(a) of the Act.[63] Thus, these activities are themselves interstate communication services for purposes of our jurisdiction under Section 2(a) of the Act.[64] Furthermore, we have preempted state regulation of such activities if, and only if, we have found that state regulation "would be likely to produce results that conflict with the goals of the Communications Act," so that preemption was necessary to the performance of our statutory duties.[65] As we discuss below, our preemption of state regulation of the rates for the billing and collection services that C&P performs for IXC interstate services meets these criteria.

40. Billing and collection services of the kind provided by C&P for AT&T directly affect the conditions under which interstate carriers offer transmission services.[66] The rates that LECs charge for billing and collection directly affect the costs of providing interstate transmission service and hence the rates that IXCs must charge their interstate customers. Moreover, as Maryland acknowledges in its application, DNP is integral to the billing and collection service that C&P provides to interstate carriers.[67] Indeed, as we found in the *Detariffing Order*, DNP gives the LECs an additional selling point to IXCs for these services.[68] The rates that LECs charge for DNP affect the overall rates, and thus the competitive viability, of the LECs' billing and collection offerings.

41. Finally, as we noted in the *Detariffing Order*, AT&T must rely on the LECs to perform recording of call detail information[69] at end offices that have not yet converted to equal access.[70] While the People's Counsel contends that billing and collection are not associated with the actual transmission of interstate telecommunications service,[71] IXCs cannot, as a practical matter, offer interstate telephone service without obtaining recorded call detail information sufficient to collect payment from customers, any more than they can provide such service without a local telephone connection to the customer. The C&P billing service at issue in this proceeding provides such information.

42. Besides "affecting" interstate communications, the billing and collection service that C&P provides for AT&T are also "closely related to the provision of [such] services," since billing and collection must occur accurately and efficiently for an interstate carrier to offer its services on an economically sound basis. From a technical perspective, DNP and the call detail recording function are two integral components of the billing and collection services that C&P provides to interstate carriers that are closely related to the interstate communication services of those carriers. DNP and recording are each performed as a function of the LECs' provision of interstate communications service – through LEC control of end user access to the interstate network and local switching for interstate calling[72] – that other, non-carrier vendors of billing and collection services cannot provide.

43. Other aspects of LEC billing and collection for interstate carriers are closely intertwined with the LECs' own interstate communications functions as well. In this regard, we note that Maryland contends that the LECs no longer provide interstate communications service to end users as members of a "partnership" with AT&T.[73] Yet C&P and other LECs do provide interstate communications service directly to end users in the form of interstate exchange access service, and they bill those users directly for some of the costs of that service in amounts prescribed by this Commission.[74] In providing such a service, a LEC is functioning as an interstate carrier.[75] When C&P provides billing and collection services to AT&T, it uses many of the same personnel and much of the same equipment and other material that it uses to perform billing and collection for its own interstate communications services. When one interstate carrier is performing billing and collection for the interstate services of another interstate carrier under circumstances like those involved in C&P's relationship with AT&T, the billing and collection service is incidental to interstate communications and subject to our Title I jurisdiction.[76]

44. In exercising our Title I authority over matters that are incidental to interstate communications, our actions must be necessary "to the effective performance of the Commission's various responsibilities."[77] As part of our responsibility to promote a "rapid, efficient, Nation-wide and world-wide wire and radio communication service ... at reasonable charges", as Section 1 of the Act states, and to ensure that charges for interstate common carrier services are "just and reasonable," as Title II of the Act states,[78] we have precluded the states from regulating the interstate billing and collection performed by the LECs. This preemption seeks to promote the provision, by LECs as well as other vendors, of billing and collection service at reasonable prices,[79] unencumbered by the direct and indirect costs of regulation.[80] When particular features of billing and collection provided by the LECs have not been offered competitively by other providers of billing services, or have had potential "bottleneck" attributes, we have taken appropriate regulatory steps to prevent exorbitant rates. Thus, in the *Detariffing Order*, we required LECs to continue to offer "recording" service to all IXCs upon reasonable request and on reasonable terms through 1989.[81] Similarly, we required the LECs to make customer name and address information available to carriers and

other billing vendors on a reasonable basis.[82] These steps, we believe, were reasonable, limited measures designed to ensure reasonable rates for interstate carriers that purchase LEC billing and collection services and for the consumers of their interstate communications services.

45. For a number of reasons, we also reject Maryland's second contention that our exercise of ancillary jurisdiction is limited in this case by Section 2(b)(l) of the Act[83] and the Supreme Court's decision in *Louisiana, supra*.[84] First, Section 2(b)(l) applies only to "intrastate" services. When billing and collection service is used to bill interstate ratepayers, the service is interstate in nature, not intrastate. This is true even though the facilities and services associated with the interstate service may also be used in relation to the provision of intrastate services.[85] By analogy, physically intrastate facilities may be used to provide both interstate and intrastate communications. Nevertheless, our federal jurisdiction is determined by the nature of the communications that pass through the facilities, not by the facilities' location or the affiliation of the service provider. Similarly, when third party billing and collection services, including local DNP, are associated with the provision of interstate services, the services are interstate, even though the same services can also be used for intrastate purposes.[86] In short, we have carefully limited our preemptive action to billing and collection charges that are assessed on interstate services and that will be indirectly reflected in IXC revenue requirements for services that are regulated by this Commission. For this reason, we find that neither Section 2(b)(1) nor the *Louisiana* decision is relevant to the issue of our jurisdiction over LEC provision of billing and collection services to interstate carriers.

46. Second, even if the billing and collection service that C&P is providing for AT&T were not interstate in nature, Section 2(b)(1) would have no effect on our jurisdiction because services that fall outside the scope of Title II are not within the scope of Section 2(b)(l). As we recently explained in our *Computer III* proceeding, the special limitation in Section 2(b)(1) on the exercise of federal regulatory jurisdiction applies to intrastate common carrier services, but does not extend to non-common-carrier services or activities.[87] We have held that billing and collection provided by LECs to interstate IXCs is not a common carrier service, and no party challenges this holding.[88] Therefore, Section 2(b)(1) is not applicable to the actions we have taken with respect to billing and collection.

C. Disconnection for Nonpayment

47. We also agree with the Bureau's conclusion that we clearly have statutory authority to regulate DNP. DNP affects both interstate and intrastate telephone service because neither type of service can take place without a telephone line being connected to the network. The record in the proceeding that led to the *Detariffing Order* indicates that disconnection of interstate service without simultaneously disconnecting local service is infeasible in most instances.[89] In these circumstances, it is our view that we have the authority to preempt state regulation of the terms and conditions under which DNP will be allowed to take place, as distinguished from the charges applied to it, on the ground that it is "not possible to separate the interstate and the intrastate components of the asserted FCC regulation."[90] Instead of exerting our preemptive power to the fullest extent of our jurisdiction, however, we have, in the *Detariffing Order*, deferred to the states, allowing them to decide whether and under what circumstances LECs will be allowed to offer DNP service to interstate carriers. We have carefully limited our preemptive action to charges for interstate DNP that will be indirectly reflected in interexchange carrier revenue requirements for services that are regulated by this Commission.

D. New Hampshire Petition

48. We also deny New Hampshire's request in its comments supporting Maryland's application that we reexamine the economic and policy rationales behind our decision to detariff billing and collection. New Hampshire recommends that we perform a new analysis of our billing and collection policies as an alternative to granting Maryland's application for review. While New Hampshire styles this request as a petition for Rule Making, it is seeking consideration of precisely the same issue that we addressed in the *Detariffing Order*, namely, whether detariffing of billing and collection is justified. Thus, its pleading is more properly characterized as an untimely petition for reconsideration of that order. We decline to revisit this issue, which we fully addressed in our *Detariffing Order*.

49. Moreover, we do not believe that further economic analysis of the type requested by New Hampshire is necessary because, by requiring in the *Joint Cost Order* that LECs continue to submit complete data on billing and collection for purposes of including this service in the jurisdictional separations process, we have already addressed the concerns of New Hampshire that the LECs must be prevented from shifting costs properly associated with their provision of interstate billing and collection services to intrastate revenue requirements. We have also adopted specific revisions in the procedures for separating those costs, on the basis of recommendations from a Federal-State Joint Board, in our *Account 645 Order* and our *Separations Conformance Order*. All of these orders were adopted in notice-and-comment proceedings in which New Hampshire and other parties had ample opportunity to express their views.[91]

50. There is another procedural difficulty with New Hampshire's "petition." We have established docketing, notice and filing procedures for petitions for Rule Making that differ from the procedures for declaratory ruling petitions, applications for review, etc. These procedures ensure that interested parties have notice of, and an opportunity to comment on, petitions and that a complete record is developed upon which we can base our decision-making processes. Because New Hampshire requested a Rule Making as part of its comments on the Maryland application, which apparently seeks quite different relief, these procedural safeguards were not triggered. These circumstances provide an additional reason to dismiss the New Hampshire petition as procedurally defective.

V. ORDERING CLAUSES

51. Accordingly, IT IS ORDERED, pursuant to Sections 1, 2(a), 4(i), 4(j), 155(c)(4)-(5), 201-203, 218-220, 221(c), 221(d), and 410 of the Communications Act, 47 U.S.C. §§ 152(a), 154(i), 154(j), 155(c)(4)-(5), 201-203, 218-220, 221(c), 221(d), and 410, that the applications for review filed by the Maryland Public Service Commission

and the Maryland People's Counsel ARE DENIED, and the petition for Rule Making filed by the New Hampshire Public Utilities Commission, IS DISMISSED.

52. IT IS FURTHER ORDERED, pursuant to Section 220(i) of the Communications Act, 47 U.S.C. §220(i), that the Secretary shall serve a copy of this Report and Order on each state commission.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] The Public Service Commission of Maryland Petition for Declaratory Ruling Regarding Billing and Collection Services, *Memorandum Opinion and Order*, 2 FCC Rcd 1998 (1987).

[2] *Id.* at 1998, para. 3, *citing* Detariffing of Billing and Collection Services, *Report and Order*, 102 FCC 2d 1150 (1986) (*Detariffing Order*), *recon. denied*, 1 FCC Rcd 445 (1986) (*Detariffing Reconsideration*).

[3] *See, e.g., Separations Manual*, NARUC-FCC Special Cooperative Committee on Telephone Regulatory Problems (1947) at 78-79, Sec. 4, Part 6; *Separations Manual*, NARUC-FCC Cooperative Committee on Communications (1971), at 79-80, Sec. 4, Part 6. Similar procedures for separating billing and collection costs are still followed today. *See, e.g.*, 47 C.F.R. §§36.381, 36.380. In 1969 we incorporated a modified version of the NARUC-FCC *Separations Manual* into Part 67 of our rules and prescribed the procedures described therein for the separation of costs between the interstate and intrastate jurisdictions. *Prescription of Separations Procedures*, 16 FCC 2d 317 (1969). Effective January 1, 1988, Part 67 of our rules, including its sections affecting billing and collection, was recodified as Part 36. *Report and Order*, Amendments of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board, 2 FCC Rcd 2639, 2639, para. 1, and at 2671, Appendix A, para. 4 (1987) (*Separations Conformance Order*).

[4] The settlement contracts between AT&T and the independent LECs were private agreements. *GTE Service Corp. v. FCC*, 782 F.2d 263, 271 (D.C. Cir. 1986), *citing* 47 C.F.R. §43.51(e) (1984). Under the usual arrangement for handling the business receipts of long-distance calls, the local company at the originating end of a long-distance call would collect payment from customers for the calls and pass through a portion of those payments to AT&T. *See Reservation Telephone Cooperative v. FCC*, 826 F.2d 1129 (D.C. Cir. 1987).

[5] *See United States* v. AT&T, 552 F.Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

[6] Investigation of Access and Divestiture Related Tariffs, *Memorandum Opinion and Order*, 97 FCC 2d 1082, 1289 (1984) (*Divestiture Related Tariffs*).

[7] *Id.* at 1289. As discussed *infra*, para. 12, we later concluded that separate DNP was impracticable.

[8] *Detariffing Order*, 102 FCC 2d at 1154-1155, *citing Divestiture Related Tariffs* at para. 3.

[9] This order uses the term "interstate DNP" to describe disconnection of all service, intrastate and interstate, for nonpayment of a bill for interstate services.

[10] *AT&T Communications v. PSC of Wyoming*, 625 F.Supp. 1204 (D. Wyo. 1985) *(Wyoming); New England Telephone and Telegraph Co. v. AT&T Communications*, 623 F.Supp. 1231 (D. Me. 1985) *(New England Tel).*

[11] *Detariffing Order*, 102 FCC 2d at 1169, para. 33.

[12] *Id.* at 1167-1169, paras. 30-33.

[13] *Id.* at 1170, paras. 37-38, and at 1171-1172, para. 39.

[14] *Id.* at 1176-1177, paras. 51-52, *citing* Land Mobile Service, 51 FCC 2d 945, 974 (1975), *aff'd sub nom., National Assn. of Regulatory Utility Commissioners (NARUC I)*, 525 F.2d 530 at 646 (D.C. Cir. 1976); Second Computer Inquiry, *Final Decision*, 77 FCC 2d 384 (1979), *aff'd on reconsideration*, 84 FCC 2d 50 (1980), 88 FCC 2d 512 (1981), *aff'd sub nom., Computer and Communications Industry Assn. v. FCC (CCIA)*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied sub nom., Louisiana PSC v. U.S.*, 461 U.S. 938 (1983). *See also Computer II Further Reconsideration*, 88 FCC 2d 512 (1981). Hereinafter in this order, we shall use the term *Computer II* in referring to the *Final Decision* in the Second Computer Inquiry as modified on reconsideration and further reconsideration.

[15] *See Detariffing Order*, 102 FCC 2d at 1177, para. 52; 1170-71, paras. 37-38.

[16] Neither Maryland nor any other state commission petitioned for reconsideration of the *Detariffing Order*.

[17] *Detariffing Reconsideration*, 1 FCC Rcd at 446, para. 12 (emphasis in original).

[18] Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities and Amendment of Part 31, *Report and Order*, 2 FCC Rcd 1298, 1308-1309 at paras. 79-81 (1987), *modified on reconsideration*, 2 FCC Rcd 6283 (1987) (*Joint Cost Reconsideration*).

[19] *Id. See also Account 645 Order*, 51 Fed. Reg. 3176 (Jan. 24, 1986), and *Separations Conformance Order, supra*. Costs associated with billing and collection for a carrier's own interstate services are, of course, included in that carrier's interstate revenue requirement. After jurisdictional separations rules are applied to billing and collection costs, the interstate allocation of those costs is excluded from interstate revenue requirements.

[20] *Detariffing Order*, 102 FCC 2d at 1176, para. 51.

[21] *Id.* The record indicated that "severed" DNP would be technically infeasible in some exchanges and expensive to implement in exchanges where it was technically feasible. *Id.* at 1166, paras. 27-28. Moreover, commenters stated that less than one out of every three hundred customers nationwide suffers the inconvenience of being disconnected each month. Finally, parties argued that the removal of DNP as a potential remedy for nonpayment would result in many unpaid bills, with the cost of those uncollectibles ultimately being borne by all end users through higher toll charges. *Id.* at 1167, n. 46, and at 1167, para. 28.

[22] Maryland Application at 3-4.

[23] *Bureau Order*, 2 FCC Rcd at 1998, para. 1.

[24] 476 U.S. 355 (1986) (*Louisiana*).

[25] *Louisiana* was decided on May 27, 1986.

[26] Detariffing the Installation and Maintenance of Inside Wiring, 1 FCC Rcd 1190 (1986), *aff'd on further reconsideration*, 3 FCC Rcd 1719 (1988), *petition for review pending sub nom.* NARUC v. FCC, C.A. No. 86-1687 (D.C. Cir. Dec. 11, 1986).

[27] *Bureau Order*, 2 FCC Rcd at 2003, para. 33.

[28] *Id.* at 2003, para. 34.

[29] Maryland Application at 2.

[30] *See supra* note 5.

[31] Maryland Application at 9. *See supra* note 3 for a discussion of the legal instruments governing those relationships.

[32] 47 U.S.C. §152(b)(1) (West Supp. 1987).

[33] *Id.*

[34] *Bureau Order*, 2 FCC Rcd at 2003, para. 33, *citing Inside Wiring Reconsideration*, paras. 13-17.

[35] People's Counsel Application at 5.

[36] New Hampshire Comments and Petition at 12-13.

[37] *Id.* at 13.

[38] We refer to the applications for review of Maryland and the People's Counsel as the "application" since all of the arguments made by the People's Counsel are covered in the longer Maryland application.

[39] NARUC Comments at 8, *citing* U.S. v. AT&T, 552 F.Supp. at 141.

[40] DCPC Comments, Attachment 1.

[41] Wyoming Public Service Commission Comments at 3, *citing Divestiture Related Tariffs*, 97 FCC 2d at 1289.

[42] Bell Atlantic Opposition at 10, *citing* Maryland Application at 18-20 and *Louisiana*, 476 U.S. 355 at 375, n. 4 (emphasis in original).

[43] AT&T Opposition at 4, *citing New York Telephone Company v. FCC*, 631 F.2d 1059, 1066 (2d Cir. 1980), *citing United States v. Southwestern Cable Co.*, 392 U.S. 157, 168-169 (1968); *General Telephone Co. of California v. FCC*, 413 F.2d 390, 401 (D.C. Cir. 1969), *cert. denied*, 396 U.S. 888 (1969).

[44] AT&T Opposition at 7, *citing Louisiana*, 106 S.Ct. at 1902, and 47 U.S.C. §410(c).

[45] MCI Opposition at 3-5.

[46] *Id.* at 5, *citing Louisiana*, 106 S.Ct. at 1902, n. 4.

[47] People's Counsel Reply at 4.

[48] No parties comment on New Hampshire's pleading.

[49] 47 C.F.R. § 1.2.

[50] *Joint Cost Reconsideration*, *supra*, 2 FCC Rcd at 6302, para. 167, and at 6303, para. 173.

[51] These decisions were the *Inside Wiring Reconsideration*, *supra*, and the *Phase I Reconsideration* in our *Computer III* proceeding. Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), CC Docket No. 85-229, *Memorandum Opinion and Order on Reconsideration*, 2 FCC Rcd 3035 at 3059-3062, paras. 174-190, *affirmed on further reconsideration*, 3 FCC Rcd 1135 at 1143, paras. 60-62 (1988) *(Phase I Further Reconsideration), appeals pending sub nom. California v. FCC*, No. 87-7230 (9th Cir.) (pet. for rev. filed May 28, 1987) and *sub nom. Illinois Bell Telephone Co. v. FCC*, No. 88-1364 (D.C. Cir.) (pet. for rev. filed May 16, 1988). *See also Report and Order*, 2 FCC Rcd 3072 *(Phase II Order), modified on reconsideration*, 3 FCC Rcd 1150 (1988) *(Phase II Reconsideration), further reconsideration pending, (pet. for rev. filed Apr. 20, 1988), California v. FCC*, No. 88-7183 (9th Cir.) (pet. for rev. filed May 13, 1988) and *Illinois Bell Telephone Co. v. FCC*, No. 88-1364 (D.C. Cir.) (pet. for rev. filed May 16, 1988).

[52] Maryland Application at 11-13.

[53] 47 U.S.C. §§153(a), (b).

[54] *Id.* at 11.

[55] *See* Maryland Application at 9, 23.

[56] We disagree with this characterization. *See infra* para. [45].

[57] 47 U.S.C. §§ 153(a),(b). Section 2(a) of the Act, 47 U.S.C. § 152(a), states, "[t]he provisions of this Act shall apply to all interstate and foreign communication by wire and radio . . . ." "Wire communication" is defined in Section 3(a) of the Act, 47 U.S.C. § 153(a), as "the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission." Section 3(b) of the Act 47 U.S.C. §153(b), provides a similar definition for "radio communication." Section 3(e) of the Act, 47 U.S.C. § 153(e), defines "interstate communication," in relevant part, as "communication . . . from any State, Territory, or possession of the United States . . . to any other State, Territory, or possession of the United States . . . ."

[58] *See, e.g., United States v. Southwestern Cable Co.*, 392 U.S. 157, 171-73, 178 (1968) *(Southwestern Cable)*.

[59] CCIA v. FCC, 693 F.2d at 213 (CCIA), *citing Southwestern Cable, supra*.

[60] *See Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 699-700 (1984); *CCIA*, *supra*.

[61] Here, since we are exercising our Title I jurisdiction not to regulate billing and collection services (with limited exceptions, *see infra* para. 42) but to preempt the states from imposing such regulation, the second half of the "ancillary jurisdiction" test (whether our exercise of that jurisdiction is necessary for the achievement of the goals of the Communications Act) substantially overlaps with the preemption test (whether preemption is necessary to ensure achievement of the goals of the Act).

[62] *Inside Wiring Reconsideration*, 1 FCC Rcd at 1192, para. 17. *See also Computer II Final Decision*, 77 FCC 2d at 450, in which we concluded that the intent of Section 3 of the Act is "to give the Commission the ability to regulate any charge or practice associated with a common carrier service in order to ensure that the carrier is operated in the public benefit."

[63] 47 U.S.C. §153(a).

[64] *See* Section 2(a) of the Act, 47 U.S.C. § 152(a).

[65] 1 FCC Rcd at 1192, para. 17. This approach is fully consistent with court decisions that recognize that we can exercise Title I jurisdiction over matters "reasonably ancillary to the effective performance" of our powers and responsibilities under Titles II and III of the Act. *See Southwestern Cable* and *CCIA*, *supra*.

[66] Our discussion focuses on federal authority with regard to the rates for billing and collection services, including the rates for DNP, because that is the area in which we have preempted the states. We have expressly refrained from preempting state authority over the practice of disconnecting telephone service for nonpayment of bills. Nevertheless, because DNP severs access not only to intrastate service, but to interstate communication service as well, we think it is clearly a practice over which we could exercise jurisdiction if there were a need to do so.

[67] Maryland Application at 3. As stated in the *Bureau Order*, DNP severs access to all communication services, including interstate service. *Bureau Order*, 2 FCC Rcd at 2003, para. 34.

[68] *Id.* at 1171, para. 38. We noted, however, that LEC provision of DNP has not served as an insurmountable competitive advantage.

[69] "Recording" in this context refers to recordation of data sufficient to determine the originating and terminating numbers involved in toll calls, times of day when the calls are made, and the durations of the calls. *Detariffing Order*, 102 FCC 2d at 1173-1174, paras. 45-46.

[70] *Detariffing Order*, 102 FCC 2d at 1159, para. 16.

[71] *See* Maryland Application at 11, 23.

[72] As we recognized in the *Detariffing Order*, the recording service provided by the LECs is intimately related to their provision of interstate access service since it is performed as a function of network switching operations. *Id.* at 1174, para. 46.

[73] *Id.* at 10.

[74] *See* Third Report and Order, MTS and WATS Market Structure, CC Docket No. 78-72, 93 FCC 2d 241 (1983) (*Access Charge Order), modified on reconsideration,* 97 FCC 2d 682 (1983), *modified on further reconsideration,* 97 FCC 2d 834 (1984), *aff'd in principal part and remanded in part, National Assn. of Regulatory Utility Commissioners v. FCC,* 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied,* 105 S.Ct. 1224, 1225 (1985), *modified on further reconsideration,* 99 FCC 2d 708 (1984), 101 FCC 2d 1222 (1985), *aff'd on further reconsideration,* 102 FCC 2d 849 (1985), *aff'd, AT & T v. FCC,* 832 F.2d 1285 (D.C. Cir. 1987).

[75] This view is consistent with the Supreme Court's landmark decision in *Smith v. Illinois Bell Telephone Co.*, 282 U.S. 133 (1930), which found that interstate communications does not stop at the long distance switchboard. Furthermore, contrary to NARUC's characterization, the MFJ does not prohibit the BOCs from acting as interstate carriers. It prevents them from providing "interexchange telecommunications services," but does not preclude them from providing "exchange access services," including interstate exchange access. *U. S. v. AT & T,* 552 F.Supp. at 227-228. Indeed, the MFJ requires the BOCs to provide interstate exchange access that satisfies certain conditions -- *i.e.*, equal access. The BOCs also in fact provide some end-to-end interstate services that are interexchange services for purposes of this Commission's rules. *See* Declaratory Ruling on the Application of Section 2(b)(2) of the Communications Act of 1934 to Bell Operating Companies, *Memorandum Opinion and Order*, 2 FCC Rcd 1750 (1987) at 1753-54, paras. 30-36.

[76] For jurisdictional purposes, the billing and collection service offered by the LECs to interstate carriers is distinguishable from such services offered to interstate carriers by non-communications entities such as credit card companies, which do not provide either DNP or recording and do not themselves provide other interstate communication services. The fact that a company provides products or services to an interstate telecommunications carrier does not, by itself, necessarily bring that company within this Commission's jurisdiction, and we did not attempt to assert jurisdiction over such non-communications entities in the *Detariffing Order*. As discussed in the *Detariffing Order* and above, we assert jurisdiction over billing and collection that LECs, which themselves offer interstate access, provide to IXCs for their interstate services when such billing and collection service include functions, such as DNP and recording, that are integral to the interstate telecommunications offerings of LECs and IXCs. Thus, the jurisdictional status of billing and collection services under the Act differs depending on whether such services are provided by LECs or other third-party vendors, but both types of billing and collection activities are similar to the extent that neither is subject to Title II regulation. *Detariffing Order*, 102 FCC 2d at 1169, para. 33.

[77] *CCIA*, 693 F.2d at 213, *citing Southwestern Cable*, 392 U.S. at 172-173.

[78] *See* Section 201(b) of the Communications Act, 47 U.S.C. §201(b).

[79] Billing and collection represent a substantial expense to interexchange carriers. For example, AT&T has estimated its expenses for billing and collection for interstate services in 1988 to be approximately $2.25 billion, of which $1.35 billion would be paid to LECs for billing and collection services that they perform for AT&T. Letter from Richard B. Lee, Director, AT&T, to John Cimko, Jr., Chief, Common Carrier Bureau Tariff Division, October 11, 1988 (response to staff letter seeking additional information in CC Docket No. 87-611), at 4 and Appendix Chart I. Thus, the efficient provision of billing and collection is important for realization of the Act's statutory mandate that "[a]ll charges, practices, classifications, and regulations for and in connection with" such Title II services "shall be just and reasonable." 47 USC §201(b).

[80] *See Detariffing Order,* 102 FCC 2d at 1170-71, para. 38, and 1177, para. 52. That our concerns in this regard were well-founded is demonstrated by the fact that Maryland itself is attempting to force LECs under its jurisdiction to raise the prices they charge for interstate billing and collection.

[81] 102 FCC 2d at 1174, para. 46.

[82] *Id.* at 1171 n.53.

[83] Section 2(b)(1) states that "nothing in [the] Act shall be construed to apply or to give the Commission jurisdiction with respect to . . . charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier . . . ."

[84] In *Louisiana*, the Court held that our decision to preempt state-imposed depreciation practices on telephone company investment in plant and equipment assigned through the separations process to the intrastate jurisdiction exceeded the limitations on our jurisdiction imposed by Section 2(b)(1).

[85] The arguments in the reply of the People's Counsel regarding the proper separations treatment of billing and collection are beyond the scope of this proceeding. We note that, although we have deregulated LEC billing and collection for interstate interexchange carriers, the costs of providing such services are divided into interstate and intrastate components pursuant to the separations process. This is the same process that applied prior to our decision to deregulate interstate billing and collection. *See Joint Cost Order*, 2 FCC Rcd 1298, 1308-1309, paras. 79-81. To ensure that the costs the LECs incur in providing interstate billing and collection services are allocated to that function and do not appear in intrastate revenue requirements, we have continued to require application of the separations rules to those activities. *See supra*, para. 11.

[86] We have not preempted state regulation of billing and collection services for intrastate common carrier communications services, whether billing and collection is provided by an intrastate carrier for itself or by third parties.

[87] *Phase I Reconsideration*, 2 FCC Rcd at 3060, para. 178.

[88] Indeed, Maryland's position that billing and collection is not a "communication service" at all under the Act clearly takes such service out of Section 2(b)(1) and is fundamentally inconsistent with Maryland's invocation of that section as a limitation on federal jurisdiction.

[89] *Detariffing Order*, 102 FCC 2d at 1166-1167, para. 28.

[90] *Louisiana*, 106 S.Ct. at 1902, n. 4.

[91] In requesting that we re-examine the economic policy analysis of the *Detariffing Order*, New Hampshire overlooks the *Joint Costs Order*, the *Account 645 Order*, and the *Separations Conformance Order*, which are all designed, in whole or in part, to provide safeguards against the improper shifting of the costs of competitive interstate activities to ratepayers. Moreover, while we stated in the *Detariffing Order* that we could not quantify the market shares of the various billing and collection vendors, we emphasized that the developing competitive arena for this service includes not only the LECs but also credit card companies, collection agencies, service bureaus, and the interexchange carriers themselves. *Detariffing Order*, 102 FCC 2d at 1170, para. 37. New Hampshire does not contend that economic conditions have since changed in a way that would

justify initiating a new Rule Making proceeding on this subject. In fact, the *Detariffing Order*'s projected view of the potential market has since been confirmed in part by DCPC's report, cited above, that Sears and American Express are providing billing and collection services to interstate carriers. In addition, as we have noted elsewhere, AT&T has assumed its own billing inquiry functions, begun performing its own billing and collection for private line and WATS/800 service, and begun phasing in its own billing and collection service for MTS customers. AT&T Supplemental Direct Case in CC Docket No. 87-611, filed July 1, 1988, at 13-14.

Since we demonstrated that the LECs are subject to existing or potential competition from such a broad array of firms, it was neither necessary nor feasible to quantify market shares. *Detariffing Order*, 102 FCC 2d at 1171, para. 38. New Hampshire presents no evidence that economic conditions have changed in a way that would cast doubt on our original conclusions.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

NORTHWEST INDIANA CATV, INC. File No. 2381-DSE-L-88
E881122

License to Cover Construction Permit
for a Fixed Earth Station in the
Domestic Fixed Satellite Service

ORDER

Adopted: May 4, 1989; Released: May 11, 1989

By the Chief, Domestic Facilities Division:

1. Northwest Indiana CATV, Inc. applied for a receive only fixed earth station to be constructed in Valparaiso, Indiana. The application was placed on Public Notice on March 1, 1989. No comments or oppositions were received during the 30 day public notice period. The application was granted on April 7, 1989. On April 19, 1989, after the license was granted, BC Cellular requested a declaratory ruling regarding the applicability of the instant grant to other matters involving the licensee currently pending before the Bureau, including applications of Rhys G. Mussman d/b/a Dial 1 Mobile, CC Docket No. 88-530.

2. In order to provide time to consider this matter fully, IT IS ORDERED, pursuant to § 1.113, that the license granted in the above captioned proceeding is SET ASIDE. This order IS EFFECTIVE upon ADOPTION.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TELECOM OPTIONS PLUS, INCORPORATED — File No. I-T-C-89-073

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 3, 1989; Released: May 11, 1989

By the Chief, International Facilities Division:

1. The above-captioned application, filed on February 16, 1989 by Telecom OPTIONS Plus, Incorporated (TOPI), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing common carriers to provide international switched voice service between the U.S. and various overseas points. The application was placed on public notice on March 8, 1989. No comments were received.

2. The applicant is already providing domestic resale services. It now proposes to resell international switched voice services in competition with other common carriers already providing resale of such services. In recent authorizations of new entrants, the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice services to the general public by TOPI.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-89-073 IS GRANTED, and Telecom OPTIONS Plus, Inc. is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1 and US Sprint's Tariffs F.C.C. Nos. 1 and 2 between the United States and those points listed in those tariffs.

5. Copies of any operating agreements entered into between the applicant and its correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61 (October 1, 1987).

8. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* the cases cited in the Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n.2.

[2] FCC v. RCA Communications, Inc. 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-562

In re Applications of

DON H. BARDEN — File No. BP-870929AK
Las Vegas, NV

LARRY L. CUMMINGS — File No. BP-870929AM
Sun City - Youngstown, AZ

Peter V. Gureckis, d/b/a CAVE CREEK BROADCASTING COMPANY — File No. BP-870929AP

Stephen E. Brisker, d/b/a TUCSON RADIO — File No. BP-870929AQ
Tucson Estates, AZ

For Construction Permit for
New Standard Broadcast Stations

MEMORANDUM OPINION AND ORDER

Adopted: May 2, 1989 **Released: May 12, 1989**

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

1. The Review Board has under consideration an appeal filed March 16, 1989 (and supplemented March 23, 1989) by Larry L. Cummings from the *Memorandum Opinion and Order*, FCC 89M-741, released March 9, 1989, of presiding Administrative Law Judge Edward Luton (ALJ), dismissing with prejudice Cummings' application in this proceeding. The Mass Media Bureau supports Cummings' appeal in comments filed March 27, 1989, whereas competing applicants Peter V. Gureckis, d/b/a Cave Creek Broadcasting Company (Cave Creek) and Stephen E. Brisker, d/b/a Tucson Radio (Tucson) oppose the appeal in pleadings filed March 28, 1989. The Board will grant the appeal and reinstate Cummings' application.

2. The ALJ's ruling was in response to a motion to dismiss filed by Cave Creek which pointed out that Cummings' application was for Sun City - Youngstown, Arizona, and that Section 73.1120 of the Commission's Rules, 47 CFR 73.1120, had been changed to eliminate the provisions which formerly permitted applicants in some circumstances to specify dual-city licensing. *See Report and Order, Amendment of Section 73. 1125 and 73. 1130 of the Commission's Rules, the Main Strudio and Program Orgination Rules for Radio and Television Broadcast Stations*, 2 FCC Rcd 3215 (1987). [1] Cave Creek alleged that Cummings' application was filed several months after the rule sections allowing dual-city licensing were removed. The ALJ ruled that Cummings' application was seeking facilities for which the Rules simply did not provide, and the application would be dismissed on that basis. Any other result, the ALJ opined, such as permitting Cummings to elect one community, would be unfair and prejudicial to the other applicants because the case may ultimately turn on the needs of the communities specified as the applicant's respective station locations under the designated Section 307(b) issue.

3. In his appeal, Cummings argues, first, that the removal of subsections (b) and (c) from Section 73.1120 of the Rules, did not amount to a Commission statement that it would cease multiple-city licensing of AM stations. Second, and more critical to his position, Cummings points out that the Bureau, in opposing dismissal of Cummings' application before the ALJ, stated that, had it focused on the problem, it would have either permitted a pre-designation amendment, or inserted a directive in the *Hearing Designation Order (HDO)*, 4 FCC Rcd 623 (1989), so that Cummings could elect which of the two communities it wished to specify as its community of license. No prejudice would result from such a choice, Cummings argues, because the election would be a "paper change" concerning Cummings' primary and secondary service obligations as a licensee of the selected community. On the other hand, Cummings concludes, dismissal of its application deprives the public of the benefit of an additional Section 307(b) choice.

4. In support of Cummings' appeal, the Bureau explains that although it could have dismissed Cummings' application because he sought dual-city licensing, it would have done so without prejudice to refiling within thirty days along with a corrective amendment, pursuant to the Commission's *Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, 56 RR 2d 776 (1984). Upon the filing of a corrective amendment, the Bureau states, Cummings' application would have been accepted *nunc pro tunc*. *Id.* at 778. Alternatively, the Bureau continues, had it become aware of the problem at the time of the *HDO*, it would have simply directed Cummings to choose one of the two communities as his community of license, which would have been an appropriate procedure, in the Bureau's view, because Cummings meets the technical requirements of signal coverage for both communities. The Bureau urges the Board to reinstate Cummings' application and direct him to elect a community of license within thirty days, but in order to avoid comparative upgrading as a result of a post B cut-off date amendment or change in the applicant's Section 307(b) attributes, the Bureau submits that, whichever community is chosen, Cummings' proposal should be attributed with an existing aural service because his original dual city proposal had an existing service.

5. In opposition to the appeal, both Cave Creek and Tucson argue that the Commission's 1984 policy statement on processing defective applications, cited by the Bureau, permits only "relatively minor" curative amendments to be accepted *nunc pro tunc* and does not apply to major amendments involving a change in proposed city of license. Both maintain that reinserting Cummings into the proceeding at this stage would be inequitable, and Tucson complains that Cummings' selection of a community could impact adversely on the interference standards applicable to his application and narrow the Section 307(b) choice because a grant to Cummings would preclude grant of the other three remaining applications.

6. In untangling the instant web, we must resolve two distinct questions: first, whether Commission policy and precedent require reinstatement of Cummings' application; and, second, if so, how to accomplish reinstatement without undue prejudice to the competing applicants. These questions must also be answered in the order presented because it would be improper to deny reinstatement, if Cummings is entitled to it under Commission law, solely to avoid some disruption to the ongoing proceeding. [2] Turning to the first question, we observe that ignorance of the Commission's rules generally, or specific unawareness that an application is defective, does not in itself justify acceptance of a late filed amendment designed to correct the defect. *PrimeMedia Broadcasting, Inc.*, 3 FCC Rcd 4293, 4294 (1988). [3] Nevertheless, the Commission has also held that where, as in this case, the Mass Media Bureau erred in its processing of the application and in the designation order, so that the applicant was not given the opportunity to correct the deficiency, which it would have received had the Bureau recognized the problem at the appropriate time, the Commission will accord the applicant the right to amend its application to conform it to the rules. *Tequesta Television, Inc.*, 2 FCC Rcd 41 (1986); *Redwood Television Ministries, Inc.*, 52 RR 2d 1365 (1982). Here, the Bureau has twice conceded that it did not "focus" on Cummings' dual city proposal prior to the filing of the dismissal motion. As in the above cases, Cummings "has participated in this proceeding in the erroneous belief that there were no serious objections to its [dual- city proposal] and was not given the opportunity to withdraw" its proposal, *Tequesta, supra*, at 43; hence, we will now provide that opportunity. [4]

7. In reinstating Cummings' application, we have already adverted to the need to avoid undue prejudice to the parties or prolonged disruption of the proceeding. To this end, and in keeping with the time period provided by the Commission in *Tequesta* for filing a corrective amendment, and the ALJ's announced hearing schedule in this case, we will allot Cummings a brief period of ten days within which to amend his application to select one of his two originally specified communities, Sun City or Youngstown, Arizona, as his proposed community of license. Furthermore, in order to foreclose any unwarranted Section 307(b) or comparative coverage advantage at this late stage of the proceeding, we will require that Cummings maintain his original transmitter site and engineering proposal and not be permitted to claim credit for coverage greater than that originally proposed. *Cf. Women's Broadcasting Coalition, Inc.*, 59 RR 2d 730, 733 (1986) (subsequent history omitted). In view of the Bureau's representation that Cummings meets the technical requirements of signal coverage for both communities, and Cummings' own assertion (Br.at 4) that "the election would not result in any change in transmission facilities," this should not prove burdensome. If Cummings is unable to amend as directed in the period provided, he will suffer dismissal of his application. [5]

8. ACCORDINGLY, IT IS ORDERED, That the appeal filed March 16, 1989 by Larry L. Cummings IS GRANTED; and

9. IT IS FURTHER ORDERED, That the application of Larry L. Cummings IS REINSTATED, on condition that within ten (10) days after the release date of this opinion Cummings submits an amendment selecting Sun City or Youngstown, Arizona as his community of license; and that otherwise the Administrative Law Judge IS AUTHORIZED to dismiss the application.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

FOOTNOTES

[1] Subsections (b) and (c) of the Rule were removed so that Section 73.1120 presently reads as follows:

> (a) Each AM, FM and TV broadcast station will be licensed to the principal community or other political subdivision which it primarily serves. This principal community (city, town, or other political subdivision) will be considered to be the geographical station location.

[2] In his supplemental pleading, Cummings informs us that pre-hearing procedures have begun with preliminary exhibit exchange scheduled for May 30, 1989 and hearing set for June 27, 1989. These dates appear to afford ample time from the anticipated release date of this opinion to avoid undue disruption of the forthcoming hearing.

[3] In a recent dismissal of an application which was found unacceptable for filing by the Mass Media Bureau because it was in violation of the terms of an international broadcasting agreement, the Commission stated as follows:

> [T]he instructions to FCC Form 301 caution that applicants should "have on hand and be familiar with," *inter alia*, part 73 of the Rules. The fact that applicants may have had no actual knowledge of the detailed terms of a treaty or Commission rule does not excuse noncompliance. *See e. g., Stearns County Broadcasting*, 104 FCC 2d 688, 696 (Rev. Bd., 1986); *Primemedia Broadcasting, Inc.*, 3 FCC Rcd 4293. It is incumbent upon all applicants to review the pertinent requirements of the Commission's rules and international treaties before filing to ensure compliance. *Kerrville Radio*, 2 FCC Rcd 3441. Accordingly, we find that Domega failed to establish good cause for acceptance of its May 4, 1987 amendment and that this amendment was justifiably dismissed by the Chief, FM Branch as untimely. *Omega Broadcasting Corp.*, FCC 88-419, released February 10, 1989, at p. 2.

[4] We reject the contention of Cave Creek and Tucson that Cummings' amendment, had one been permitted by the Bureau, would have effected a major change which could not be corrected *nunc pro tunc*. Under Section 73.3571(a)(1) of the Rules, 47 CFR 73.3571(a)(1), a major change, *inter alia*, is a "change in . . . station location." Here, one community would be deleted and the remaining previously specified community chosen, but no *new* location permitted. Even, however, were the change a major one, it would not be a decisional factor because in both *Redwood* and *Tequesta*, the Commission allowed amendments where major changes in ownership occurred.

Also, we disagree with Cummings that the Commission has not effectively eliminated dual-city licensing by its modification of Section 73.1120. That rule permitting dual-city licensing was only designed to alleviate a potential burden of the program

origination rule (Section 73.1130). With the elimination of the origination rule, the dual-city licensing provision was also removed. *See Amendment of Section 73. 1125 and 73.1130 of the Commission's Rules, supra.*, 2 FCC Rcd at 3218-3219.

[5] In resolving this appeal, we are not unmindful of the holding of the court of appeals in *Reuters Ltd. v. FCC*, 781 F.2d 946 (D.C. Cir. 1986), where the court reversed the Commission's rescission of a grant of microwave licenses to an applicant because other applications which were misfiled at the time of the grant were mutually exclusive to those granted. By contrast to the instant proceeding, however, the court found that the Commission had properly granted the licenses in question pursuant to the express provisions of its rules and could not later engage in an *ad hoc* departure from those rules in order to achieve "laudable aims" or "justice in the individual case" (*id.*, at 950-951); whereas here, the Bureau has conceded that it did not treat Cummings' application in conformance with Commission processing rules at any stage.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: May 12, 1989

LOCAL EXCHANGE CARRIERS FILE REVISIONS TO COST ALLOCATION MANUALS

On April 28, 1989, Cincinnati Bell Telephone Company, Contel Service Corporation and U S West filed proposed revisions to their permanent cost allocation manuals for the separation of regulated and nonregulated costs. U S West requests that its revisions related to cost pools supporting Customer Dialed Account Recording be made retroactive to October 1, 1988. On May 1, 1989, United Telephone System, Inc. and the General Telephone Operating Companies filed proposed revisions to their cost allocation manuals. These companies filed their original manuals in 1987 pursuant to the requirements of the Commission's *Joint Cost Order*, 2 FCC Rcd 1298 (1987).

Parties may file comments on the proposed revisions to the cost manuals no later than **June 5, 1989.** Replies should be filed by **June 20, 1989.** A copy of each pleading should be sent to Alicia Dunnigan, FCC, Common Carrier Bureau, 2000 L Street, N.W., Room 812, Washington, D.C. 20554 and to International Transcription Services, Inc., 2100 M Street, N.W., Washington, D.C. 20036, (202) 857-3800. Copies are also available for public inspection and copying in the Accounting and Audits Division public reference room, 2000 L Street, N.W., Room 812, Washington, D.C.

For further information contact Alicia Dunnigan, (202) 634-1861.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-2
Phase I

In the Matter of

Filing and Review of Open Network
Architecture Plans

ORDER

Adopted: May 4, 1989; Released: May 12, 1989

By the Commission:

1. The *BOC ONA Order* [1] announced that we would convene a Federal/State Joint Conference (the Conference) pursuant to Section 410(b) of the Communications Act,[2] as an ongoing forum for state/federal cooperation to facilitate the development and implementation of Open Network Architecture (ONA). The order stated that the Conference members would include the Chairman of this Commission, who will serve as Conference chairman, one additional member of this Commission, and seven state commissioners, one from each BOC region. The order also stated that we would appoint members from the state commissions in consultation with the National Association of Regulatory Utility Commissioners (NARUC). NARUC has nominated thirteen state commissioners to serve on the Conference, including two commissioners from each region except the PacTel region, stating that such an arrangement "will better reflect the diversity of viewpoints". [3]

2. The NARUC nominees to the Joint Conference are: Commissioner Andrew C. Barrett, Illinois Commerce Commission, and Commissioner Gloria L. Gaylord, Ohio Public Utilities Commission, from the Ameritech region; Commissioner Lilo K. Schifter, Maryland Public Service Commission, and Chairman Patricia M. Worthy, District of Columbia Public Service Commission, from the Bell Atlantic Region; Commissioner Thomas M. Beard, Florida Public Service Commission, and Commissioner Edward B. Hipp, North Carolina Utilities Commission, from the BellSouth region; Chairman Kenneth Gordon, Maine Public Utilities Commission, and Deputy Chairman Gail Garfield Schwartz, New York Public Service Commission, from the NYNEX Region; President G. Mitchell Wilk, California Public Utilities Commission, from the PacTel Region; Commissioner James M. Fischer, Missouri Public Service Commission, and Commissioner Rich Kowalewski, Kansas Corporation Commission, from the Southwestern Bell region; and Chairman Dennis J. Nagel, Iowa State Utilities Board, and Commissioner Nels J. Smith, Wyoming Public Service Commission, from the US West region.[4]

3. As we noted in the *BOC ONA Order*, neither the Communications Act nor this Commission's rules contain requirements regarding the number of commissioners that may serve on a Joint Conference.[5] The *BOC ONA Order* expressed our belief that seven state representatives might be the appropriate number of state commissioners to balance the need for adequate state representation at such a conference with the goal of administrative ease and efficiency. However, we have convened the Conference in a spirit of joint cooperation, and believe that it is reasonable to accept NARUC's request for increased state representation. Accordingly, we will appoint to the Joint Conference the full list of Commissioners that NARUC nominated and provided to us. We also appoint Chairman Dennis R. Patrick and Commissioner Patricia Diaz Dennis to the Conference, with Chairman Patrick to serve as Conference chairman.

4. Accordingly, IT IS ORDERED, pursuant to Sections 4(i)-(j) and 410(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 410(b), that Chairman Dennis R. Patrick, Commissioner Patricia Diaz Dennis, Commissioner Andrew C. Barrett, Commissioner Gloria L. Gaylord, Commissioner Lilo K. Schifter, Chairman Patricia M. Worthy, Commissioner Thomas M. Beard, Commissioner Edward B. Hipp, Chairman Kenneth Gordon, Deputy Chairman Gail Garfield Schwartz, President G. Mitchell Wilk, Commissioner James M. Fischer, Commissioner Rich Kowalewski, Chairman Dennis J. Nagel, and Commissioner Nels J. Smith ARE APPOINTED as members of the Federal/State Joint Conference convened in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Phase I, 4 FCC Rcd 1, 110, paras. 214-223 (1989) (*BOC ONA Order), pets. for recon. pending; app. for review pending subnom., Pacific Bell and Nevada Bell v. FCC,* No. 89-1194 (D.C. Cir.).

[2] 47 U.S.C. § 410(b).

[3] Letter to Dennis R. Patrick, Chairman, FCC, from Paul Rodgers, Administrative Director, NARUC, April 17, 1989, at 3.

[4] *Id.*

[5] *BOC ONA Order, supra* n. 1 at 4 FCC Rcd 112, para. 218.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-234

In re Applications of

CHARISMA BROADCASTING CORPORATION	File No. BPCT-850207KG
ARLINGTON 68 TV, INC.	File No. BPCT-850418KZ
UNITED BROADCAST GROUP, LTD.	File No. BPCT-850419KE
SOUTHWEST COMMUNICATIONS, LTD.	File No. BPCT-850419KO
JOHNSON TELEVISION, LTD.	File No. BPCT-850422KG
BRISCOE BROADCASTING, LTD.	File No. BPCT-850422KH
CHANNEL 68, NORTH TEXAS TELEVISION LIMITED PARTNERSHIP	File No. BPCT-850422KI
THE LOURAY CORPORATION	File No. BPCT-850422KM
METROPLEX COMMUNICATIONS, INC.	File No. BPCT-850422KP
SAMMY A. THORNTON	File No. BPCT-850422KR
NATIVE AMERICAN BROADCASTING COMPANY, A LIMITED PARTNERSHIP	File No. BPCT-850422KU

For Construction Permit
for a New Television Station
Arlington, Texas

Appearances

Morton L. Berfield and *Roy W. Boyce* on behalf of Charisma Broadcasting Corporation; *Chester F. Naumowicz* on behalf of Arlington 68 TV, Inc.; *James J. Popham* and *Bradford D. Carey* on behalf of United Broadcast Group, Ltd.; *Matthew H. McCormick, Christopher G. Wood, Dennis F. Begley,* and *Mara J. Pastorkovich* on behalf of Southwest Communications, Ltd.; *Jeffrey D. Southmayd* and *Steven Simpson* on behalf of Johnson Television, Ltd.; *Clarence McKee, John F. Garziglia, Peter Gutmann,* and *Neal J. Friedman* on behalf of Briscoe Broadcasting, Ltd.; *William Zimsky* and *Hugh Taylor* on behalf of Channel 68, North Texas Television Limited Partnership; *Gary S. Smithwick* on behalf of The LouRay Corporation; *Ernest T. Sanchez, Roger P. Furey, Nora E. Garrote, Sharon P. Sivertsen, Ann P. Morton,* and *Kendall Satterfield* on behalf of Metroplex Communications, Inc.; *James L. Oyster* on behalf of Sammy A. Thornton; *Theodore D. Kramer, Lee W. Shubert,* and *Melodie A. Virtue* on behalf of Native American Broadcasting Company, A Limited Partnership; and *Jerry Hermele* on behalf of Chief, Mass Media Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOSEPH P. GONZALEZ

Issued: May 2, 1989; Released: May 15, 1989

1. This is a multi-applicant proceeding for authority to construct a new commercial television station on Channel 68, Arlington, Texas. The present list of applicants is as follows:[1] Charisma Broadcasting Corporation (Charisma); Arlington 68 TV, Inc. (Arlington); United Broadcast Group, Ltd. (United); Southwest Communications, Ltd. (Southwest); Johnson Television, Ltd. (Johnson); Briscoe Broadcasting, Ltd. (Briscoe); Channel 68, North Texas Television Limited Partnership (North Texas); The LouRay Corporation (LouRay); Metroplex Communications, Inc. (Metroplex); Sammy A. Thornton (Thornton); and Native American Broadcasting Company, A Limited Partnership (Native American). The applications were designated for hearing on the following issues:

(1) To determine, with respect to United Broadcast Group, Ltd., Johnson Television, Ltd., Channel 68, North Texas Television Limited Partnership, Sammy A. Thornton, and Native American Broadcasting Company, whether the tower height and location proposed by each would constitute a hazard to air navigation.

(2) To determine which of the proposals would on a comparative basis, best serve the public interest.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

2. The air hazard issues designated against United, Johnson North Texas, Thornton, and Native American were resolved favorably to these applicants by *Memorandum Opinion and Order*, FCC 86M-2742, released on September 5, 1986, *Memorandum Opinion and Order*, FCC 85M-3580 released on September 13, 1985, *Memorandum*

Opinion and Order, FCC 87M-752, released on April 7, 1987, *Memorandum Opinion and Order*, FCC 85M-4800, released on December 6, 1985, and *Memorandum Opinion and Order*, FCC 86M-2074, released on June 24, 1986, respectively.

3. By *Memorandum Opinion and Order*, FCC 87M-464, released on March 3, 1987, the Presiding Judge enlarged the issues in this proceeding to include the following:

> To determine, with respect to Briscoe Broadcasting, Ltd., Charisma Broadcasting Corporation, Johnson Television, Ltd. and Arlington 68 TV, Inc., the feasibility of their technical proposals in light of the fact that the permittee of Channel 58, Dallas, Texas has specified and intends to construct its antenna at virtually the same height and location as proposed by Briscoe Broadcasting, Ltd., Charisma Broadcasting Corporation, Johnson Television, Ltd. and Arlington 68 TV, Inc., and the effect, if any, of such a fact on the basic qualifications of these applicants.

The technical feasibility issue designated against each one of these applicants was subsequently resolved in each applicant's favor. *See*, the following: *Memorandum Opinion and Order*, FCC 87M-992, released on May 6, 1987; *Memorandum Opinion and Order*, FCC 87M-976, released on May 5 1987; *Memorandum Opinion and Order*, FCC 87M-993, released on May 6 1987; and *Memorandum Opinion and Order*, FCC 87M-980, released on May 5 1987.

4. By *Memorandum Opinion and Order*, FCC 87M-289, released on February 10, 1987, the Presiding Judge added the following issue against North Texas:

> To determine whether the engineering proposal of Channel 68, North Texas Television Limited Partnership is technically feasible of implementation.

This issue was resolved by summary decision in North Texas' favor by *Memorandum Opinion and Order*, FCC 87M-967, released on May 4, 1987.

5. In a subsequent *Memorandum Opinion and Order*, FCC 87M-1913 released on August 13, 1987, the issues in this proceeding were further enlarged to include the following:

> To determine whether Briscoe Broadcasting, Ltd. is financially qualified to construct and operate the proposed television station for three months without revenues and, if not, the effect thereof on its basic qualifications.

6. An Admissions Session was held on September 5, 1986. The hearing began on September 9, 1986, resumed on September 15, 1987, and concluded on December 7, 1987.

PROCEDURAL MATTERS

7. In a motion filed December 8, 1987, North Texas seeks leave to supplement its Phase One Proposed Findings of Fact and Conclusions of Law to include information with respect to the total distance between Arlington, Texas and the communities of San Francisco, California and Anacortes, Washington and the number of television and radio stations licensed to their ADI(s) and the number of newspapers printed in San Francisco and Anacortes. For good cause shown, the Motion will be granted, and the supplement received.

8. United's unopposed request, filed on January 21, 1989, for leave to file an erratum to its initial proposed findings of fact will also be granted, and good cause also exists for granting the "Motion to Reopen Record and Admit Additional Evidence" filed by United on February 3, 1988 and the record in this proceeding will be reopened for the sole purpose of receiving into the record as United Exhibit 11, Arlington 68's "Statement" filed on January 20, 1988 in which it is reported that Jo Ann Reyes is seeking her party's nomination as a candidate for the United States Congress from the 26th Congressional District of Texas.

9. Native American's motion to strike certain portions of Southwest's Phase II findings will be granted and the objected to material stricken since it is either already set forth in Southwest's Phase I findings or constitutes an attempted supplement to those findings without leave to do so.

10. North Texas' motion to reopen the record filed on May 24 1988 will be denied. It seeks therein to admit into evidence a further supplement to the Joint Engineering Exhibit to reflect a modification of the construction permit held by Interspan Communications, A California Limited Partnership for Channel 52, Fort Worth, Texas. The request is opposed by United, LouRay, Charisma, and Arlington 68.

11. There has been no showing by North Texas that the coverage data which would be reflected in the proposed further supplement to the parties' Joint Engineering Exhibit in this proceeding would be material in any way, to the comparative coverage issue in this proceeding. Accordingly, North Texas' request that the record be reopened to receive the additional information will be denied. A finding with respect to the comparative coverage issue will be made on the basis of the evidence already of record.

CHARISMA BROADCASTING CORPORATION

Findings of Fact

12. Charisma is a Texas, nonstock, nonprofit corporation governed by three directors, each of whom has one vote (Charisma Exh. 1). The names of Charisma's three directors and their corporate and prospective positions at the station are as follows:[2]

Name of Director	Corporate Position	Station Position
Walter V. Grant, Jr.	President/ Treasurer and Director	General Manager
Fern Powell Grant	Vice President Secretary/ Director	Business Manager
Clinnetta Moore	Director	Director of Public Service Programming

Diversification

13. Neither Charisma nor any one of its directors has any ownership interest in any medium of mass communications (Charisma Exh. 1; Charisma Exh. 2, p. l; Charisma Exh. 3, p. 1; Charisma Exh. 4, p. 1).

14. Mr. Grant is the Chairman of the Board of W. V. Grant Evangelistic Association, the parent corporation for his ministries (Tr. 263-64, 291) which owns much of the stock of the QC Agency (Tr. 251) which, in turn, distributes his television programs (Tr. 258). He will continue these programs if Charisma is the successful applicant (Tr. 257). However, broadcast of these programs in the Dallas area will be limited to Channel 68, Arlington, Texas (Tr. 257, 272-73; Charisma Exh. 2, p. 2). Mr. Grant also publishes a magazine which is distributed by the QC Agency with 202,377 subscribers (Tr. 298-99; United Exh. 10, p. 1).

Best Practicable Service

Walter J. Grant, Jr.

15. Walter J. Grant, Jr. is senior pastor of Eagle's Nest Cathedral (Tr. 245). He will serve as General Manager of Charisma's proposed station, and the Rev. Mr. Grant will spend 40 hours a week supervising the overall operations of the station. As a member of Charisma's Board of Directors, Grant will also participate in formulating policy for the station with respect to its programming as well as all other phases of the station's operations (Charisma Exh. 2, p. l).

16. Rev. Mr. Grant presently resides within the city grade contour of Charisma's proposed television station, and he has lived at various locations within that contour for a total of seventeen years (Charisma Exh. 2, p. 1). During that time, Grant has been involved in community outreach programs sponsored by his church. These programs provide food, clothing, and housing to disadvantaged individuals counseling services to those in need, and support to youth groups who visit the elderly and the infirm (Charisma Exh. 2, p. 2).

17. Rev. Mr. Grant has never worked nor has he ever been employed by a broadcast facility. Although his sermons are aired from broadcast facilities throughout the country, he plays no part in producing these programs (Tr. 253) or in distributing them with the exception of some input in the negotiating contracts to purchase time on a particular station (Tr. 258-59).

Fern Powell Grant

18. Fern Powell Grant will serve as the station's Business Manager, devoting a minimum of 40 hours a week to her duties at the station (Charisma Exh. 3, p. 1). As Business Manager, Mrs. Grant will be responsible for the station's finances, including the development of sufficient income to support the station's programming (Charisma Exh. 3 p. 1). Her responsibilities will also include overseeing the station's Equal Employment Opportunity Program (Charisma Exh. 3, p. 2). Mrs. Grant was elected a director of Charisma in January 1985 (Tr. 350-51). As a director, she will also participate in policy making decisions affecting the station's programming as well as all other phases of the station's operations. In addition to her commitment to the station, Mrs. Grant will continue to work four or five hours a week during the weekends as well as some evenings at her husband's printing shop (Tr. 368-69).

19. Mrs. Grant presently lives within Charisma's proposed city grade contour and has had various residences within that area for a total of twenty-seven years, except for the years 1981 and 1982 (Tr. 341; Charisma Exh. 3, p. 1). As an active member of her church, Mrs. Grant participates in community programs sponsored by her church which provide food, clothing and housing for the disadvantaged; counseling services for those with personal or health problems; and support for youth groups who visit the elderly, shut-ins and persons who are hospitalized (Tr. 344-45; Charisma Exh. 3, p. 2).

20. Mrs. Grant has no prior broadcast experience (Tr. 364).

Clinnetta Moore

21. Clinnetta Moore, who is Black, proposes to serve as Charisma's Director of Public Service Programming, devoting a minimum of 40 hours a week to overseeing and supervising the development as well as the broadcasting of public service programming. In addition, she will serve as liaison with community groups and organizations. Mrs. Moore will also serve as a director, and, in that position, will participate in policy making decisions affecting not only programming but all other aspects of the station's operations (Charisma Exh. 4, p. 1).

22. Mrs. Moore has lived within the city grade contour of Charisma's proposed station for a total of thirteen years (Charisma Exh. 4, p. 1), from 1966 to 1971 and from 1978 to the date of the hearing (Tr. 380). She is a member of Flame Fellowship, a religious group, and on her own visits the sick in hospitals in the area (Tr. 388-91). Mrs. Moore is a former member of the Parent Teachers Association in Bedford, Texas (Charisma Exh. 4, p. 2).

23. Mrs. Moore has no broadcast experience (Tr. 416).

Conclusions of Law

24. Charisma is a non-profit organization composed of three directors, with each director entitled to one vote. Any one director can be voted out of office by two of the three directors. Of the three directors in office in May 1984, two directors were replaced by the time the application was filed in February 1985 (Tr. 283-84).

25. Clinetta Moore has not paid the bills, signed checks or prepared balance sheets or other financial records for Charisma (Tr. 415) and she has not participated in developing a staffing proposal, in planning programming for the station (Tr. 414), or in hiring engineers or the legal consultant for the application (Tr. 415). Mrs. Moore also played no part in estimating the costs of the construction and operation of the station or in obtaining financing to meet these costs (Tr. 414-15). In addition, Mrs. Moore was unable to say whether or not she reviewed the application, its exhibits or amendments prior to filing the application with this Commission (Tr. 411-12).

26. Similarly, Fern Grant played no role in estimating the costs of the construction and operation of the station, and she did not participate in obtaining financing for the venture (Tr. 355). Mrs. Grant as well has not paid Charisma's bills, signed checks, or prepared balance sheets or other financial records for Charisma (Tr. 358), and she also did not participate in developing a staffing proposal, in planning programming for the station or in hiring

engineers and the legal consultants (Tr. 356-57). Finally, Mrs. Grant did not review the application, its exhibits and amendments prior to its filing with this Commission (Tr. 358).

27. The record indicates that both Mrs. Grant and Mrs. Moore did not become principals of Charisma until after most of the information necessary for the Arlington application had been acquired and engineering and legal counsel were already in place. The Rev. Mr. Grant testified that much of the information necessary to prepare the Arlington application was already available from an earlier Lake Dallas, Texas application prepared by Charisma (Tr. 316). However, all three directors discussed the proposal and agreed to file an application for the Arlington facility (Tr. 314-15). They also reached an agreement as to the proposed facility's programming and hours of operation (Tr. 357). Charisma's directors have held informal meetings (Tr. 421). One of the directors Mrs. Grant, was given the responsibility of securing publication of the local notice and for establishing the applicant's public file (Tr. 336-38), and she has reviewed Charisma's application since its filing on several occasions (Tr. 340-41). Mrs. Grant was also involved in preparing the answers to interrogatories (Tr. 362). Another director, Mrs. Moore discussed with Rev. Mr. Grant, president and a director of Charisma whether or not to admit Mrs. Grant as a director, and they both voted to do so (Tr. 350-57, 360, 394-95, 405). Although Mrs. Grant and Ms. Moore's participation to date has been slight and they have no financial stake in the enterprise, it is clear on the record that their dedication to the enterprise is based on their membership and active participation in Rev. Mr. Grant's ministry. Mrs. Grant and Mrs. Moore appear willing and able and possessed of the necessary dedication to assume their duties at the station which will involve managerial responsibility.

28. As noted above, Rev. Mr. Grant is senior pastor of Eagle's Nest Cathedral where he spends six hours each weekend on ministerial duties (Tr. 321). In the event that Charisma is awarded the construction permit, Mr. Grant will remain the pastor as well as continue to perform in approximately six to eight television programs each month (Tr. 252-53 257). Although he also holds out of town prayer meetings, Grant testified that he is in the process of curtailing these activities (Tr. 250). Although these activities will place demands on Grant's time, there is no indication in the record that they will prevent him from meeting his commitment to Channel 68.

29. Mr. Grant has been a continuous resident of Duncanville Texas since 1983 (Tr. 239-40), a point within the Grade B contour of the proposed station. All of his civic activities within the service area are connected with his duties as pastor of Eagle's Nest Cathedral (Charisma Exh. 2, p. 2). Similarly, Mrs. Grant's civic activities within the same area are church related activities (Tr. 344-45). Mrs. Moore's civic activities are limited to religious discussions, visits with the sick, and past membership in a parent-teachers association (Tr. 392). Collectively, all three Charisma principals' participation in the civic activities of their community is closely related to their church activities, with the exception of Mrs. Moore's slight to negligible involvement in non-church sponsored civic activities in the proposed service area.

30. Neither Mrs. Grant nor Mrs. Moore have any broadcast experience. The Rev. Mr. Grant has never worked for a broadcast facility. However, he is involved to a limited extent in producing and presenting radio and television programs consisting of his sermons, and he is also an owner of a production company which produces and distributes these programs (Tr. 255). Mr. Grant's broadcast experience is clearly limited and he is entitled to only a very slight credit for past broadcast experience.

31. Neither Charisma, Mrs. Grant nor Mrs. Moore have any interests or associations with any medium of mass communications. As noted above, Rev. Mr. Grant, although he does not own any broadcast properties, is Chairman of the Board of W. V. Grant Evangelistic Association, the parent corporation of his ministries (Tr. 263-64, 291). The Association, in turn, owns much of the stock of the QC Agency (Tr. 251) which distributes six to eight television programs a month of Rev. Mr. Grant's sermons which are shown in approximately 55 markets including the top ten markets (Tr. 252, 254-55, 258; United Exh. 10, pp. 5-6). Rev. Mr. Grant will continue to produce and distribute these programs even if Charisma receives the construction permit (Tr. 257). However, airing of these programs in the Dallas area will be limited to Channel 68 Arlington, Texas, and contracts with three other stations in the market will be cancelled (Tr. 257, 272-73; Charisma Exh. 2, p. 2). In addition Rev. Mr. Grant publishes a magazine which is distributed nationwide by the QC Agency with a circulation of 202,377 subscribers as of January 1986 (Tr. 298-99; United Exh. 10, p. 1). There is no indication in the record that the production of these programs or the distribution of Grant's magazine will undermine the goals of diversification to the slightest degree. The Presiding Judge concludes therefore that the Rev. Mr. Grant's programming and magazine are of no diversification significance (*see*, ***Morris, Pierce & Pierce***, 88 FCC 2d 713, 723-24 (Rev. Bd. 1981).

ARLINGTON 68 TV, INC.

Findings of Fact

32. Arlington is a Texas corporation which is authorized to issue two classes of stock: 100 shares of Class A voting common stock and 900 shares of Class B nonvoting common stock (Arlington Exh. 1). All 100 shares of Class A voting stock are issued to Jo Ann Reyes, who holds 20.08 percent of the outstanding equity in Arlington, and C. Tim Villasana and Harry Reever with 199 shares each of Class B nonvoting common stock and 39.96 percent each of the outstanding equity in Arlington (Arlington Exh. 1). On the B cutoff date in this proceeding, Harry Reever held 450 shares of Class B nonvoting common stock and 450 were issued to Tim Villasana (Tr. 1509-10).

33. Jo Ann Reyes is Arlington's sole Director. She is Arlington's President, and R. M. Ginsberg, who has no ownership interest in the corporation, serves as Secretary (Arlington Exh. 1).

Diversification

34. Neither Arlington nor Mrs. Reyes have any interest in any medium of mass communications (Arlington Exh. 2).

35. C. Tim Villasana is a general partner (51 percent equity) and Harry Reever a limited partner (49 percent equity) of Villa-Reeve Ltd. (Arlington Exh. 2, p. 1). On

May 20, 1985, Jo Ann Reyes executed an amendment to Arlington's application reflecting the grant of Villa-Reeve, Ltd.'s application for a new UHF broadcast station to serve Baytown, Texas (Tr. 1569). No commitment to divest this interest was made until December 4, 1985, nearly six months after the B cutoff date in this proceeding (Tr. 1571).

Best Practicable Service

Jo Ann Reyes

36. Jo Ann Reyes, an Hispanic, will serve as General Manager of Arlington's proposed station, devoting a minimum of 40 hours a week to her duties at the station which will include formulating the basic policies of the station, assuming responsibility for the implementation of those policies, and supervising, on a day-to-day basis, all phases of station's operation (Arlington Exh. 3).

37. Mrs. Reyes lived in Arlington, Texas between January 1973 and May 1975 and has been a continuous resident of that community since 1978. Her membership in the Business and Professional Women's Organization, Fort Worth/Arlington began in 1984. She is also a member of the Hispanic Chamber of Commerce, Arlington/Fort Worth Area Chapter. Mrs. Reyes serves, since 1985, as a volunteer at the Wesley Methodist Community Center in Tarrant County where she provides immigration services (Tr. 1635), and she has been a member of LULAC, Fort Worth Chapter and the Arlington, Texas Chapter since 1983. In addition, Mrs. Reyes has held memberships in the past in the following organizations: Overland Stage Citizens Committee (1982); Overland Stage Neighborhood Association Arlington, Texas (1983-1984); Arlington Neighborhood March of Dimes (1985); St. Vincent de Paul Catholic Church, Arlington, Texas, as a lecturer (1979-1982), and as a pre-school teacher (1983-1984); the Committee of Student Activity Board, University of Texas at Arlington and other student organizations (1974-1975); and the legal committee for Tarrant County Junior College (Tr. 1632).

38. Mrs. Reyes has no past broadcast experience.

Conclusions of Law

39. Article 12 of Arlington's Articles of Incorporation provides that each share of stock has one vote on each matter on which the share is entitled to vote. Arlington's By-Laws further explain that each share regardless of class shall be entitled to one vote on each matter submitted to a vote, except to the extent that the voting rights of the shares of any class or classes of stock are limited or denied by the Articles of Incorporation. Although the Articles of Incorporation do not specify any corporate matter upon which a holder of either designated class of stock may not vote (North Texas Exh. 6), the designation of stock as nonvoting appears clear enough and the Articles of Incorporation's failure to recite the fact that nonvoting shares cannot vote appears of no significance.

40. The Messrs. Reever and Villasana, the two nonvoting shareholders, suggested to Mrs. Reyes that she select Harold Munn as the station's broadcast consultant (Tr. 1534, 1674, 1712), and she hired him based on their recommendations (Tr. 1534). She indicated, however, she initially wanted to hire her brother-in-law but he was already representing another applicant in this proceeding (Tr. 1536-37). Her decision to hire Arlington's communications attorney was also based on Mr. Villasana's recommendation (Tr. 1535), and she testified that she made no independent inquiry as to his qualifications (Tr. 1526). Her choice of local counsel was entirely her own (Tr. 1718). Mrs. Reyes was unable to give a reason for selecting Arlington's bank; however, Mr. Reever testified that it was chosen because he knew an officer at that particular bank (Tr. 1664-65). Villasana and Reever were involved in the lease or purchase of Arlington's antenna site (Tr. 1673). Mr. Reever initially contacted the site owner, and all three principals went with Mrs. Reyes' husband to visit the site prior to the filing of Arlington's application (Tr. 1673). Although Mrs. Reyes believes that she made the first contact with the owner of the proposed antenna site (Tr. 1643) Mr. Reever is under the impression that he made the initial inquiry (Tr. 1673). According to her testimony, Mrs. Reyes had several contacts with the owner of Arlington's antenna site (Tr. 1641-43, 1673).

41. All three principals discussed the applicant's staffing proposal (Tr. 1667) as well as the estimates for the cost of constructing and operating the station (Tr. 1719). Mr. Reever also was involved in obtaining assurances from Arlington's lending institution for the financing of the construction and operation of the proposed station (Tr. 1672), and all three shareholders were required to guarantee the note which would secure draws upon Arlington's line of credit. The Messrs. Villasana and Reever and Mrs. Reyes visited the institution together for the purpose of executing the note and opening Arlington's bank account into which the line of credit would be deposited (Tr. 1581, 1585, 1663 1725-26). Mr. Reever had signatory authority on this account which was withdrawn prior to the filing of the application (Tr. 1663). Both nonvoting shareholders reviewed Arlington's application before it was filed with the Commission (Tr. 1677, 1678, 1724), including the applicant's programming proposal (Tr. 1669), but they played no part in preparing the application (Tr. 1678, 1724). The nonvoting shareholders have not paid any of Arlington's bills (Tr. 1697, 1724) and they did not prepare or review balance sheets (Tr. 1724). In addition, they were not involved in planning the hours of operation of the station (Tr. 1669), its programming (Tr. 1668-69, 1710), and they did not review Arlington's hearing exhibits prior to their submission in this proceeding (Tr. 1690).

42. Mrs. Reyes alone draws on Arlington's line of credit with the lending institution (Tr. 1650) and she has sole authority to write checks on the account (Tr. 1516, 1663). Arlington maintains its pre-operational place of business at her office, and she pays all of Arlington's bills (Tr. 1564). Mrs. Reyes was also involved in estimating the costs of the construction and operation of Arlington's proposed station (Tr. 1539) and in securing a transmitter site (Tr. 1539). In addition, according to her testimony, she initiates contact with the nonvoting shareholders when necessary to provide them with appropriate information (Tr. 1552-53), and she reviewed Arlington's Articles of Incorporation and its By-Laws with corporate counsel prior to their finalization (Tr. 1572-73).

43. By a statement filed with this Commission on January 20 1988, (United Exhibit 11), Mrs. Reyes reported that she intended to run for a Congressional seat in the United States Congress. Her proposal as set forth in Arlington's application, to work full time at the proposed station is clearly incompatible with her Congressional aspirations. Accordingly, her pledge to work full time at

the station is considered to have been rescinded. Since there is no evidence of record that she will be able to devote any period of time on a regular basis to the station Arlington is not entitled to any integration credit for Mrs. Reyes proposal to work at the station. In view of this finding, it is unnecessary to reach a conclusion as to whether or not the Messrs. Villasana and Reever are truly insulated nonvoting shareholders since Arlington is not entitled to an integration credit for Mrs. Reyes, its sole proposed integrated principal.

UNITED BROADCAST GROUP, LTD.

Findings of Fact

44. United is a limited partnership organized under the laws of the State of Texas (United Exh. 1, p. 1). United's ownership structure is as follows:

Name	Nature of Partnership	Equity Ownership	Minority Status
Dr. OK Kyun Kim	General Partner	25%	Asian
Been Fu Lee	Limited Partner	19%	Asian
Joey Kang	Limited Partner	25%	Asian
David K. Line	Limited Partner	31%	Caucasian

(United Exh. 1, p. 1.)

Diversification

45. United, Dr. Kim, and the limited partners, Messrs Lee, Kang and Line, have no current ownership interest or association with any medium of mass communications (United Exh. 3, p. 1).

Best Practicable Service

Dr. OK Kyun Kim

46. Dr. OK Kyun Kim is of Korean parentage. Dr. Kim will serve as the full-time General Manager of United's proposed station and he will devote a minimum of forty (40) hours a week to his duties at the station (United Exh. 4, p. 1). As General Manager, Dr. Kim will supervise the station's overall operations, and he will be directly responsible for the development and implementation of the station's policies (United Exh. 4 p. 1). Dr. Kim will also oversee and supervise the business and financial aspects of the station's operations and supervise directly or indirectly all station employees. He will also have responsibility for the implementation of the station's Equal Employment Opportunity program.

47. Dr. Kim currently resides in Plano, Texas, which is within the Grade A contour of United's proposed station (United Exh. 5, p. 2; Tr. 1767), and he has lived there continuously since 1972 (United Exh. 5, pp. 2-3). In the event that United's application is granted, Dr. Kim will relocate to the City of Arlington, Texas.

48. In the past, Dr. Kim has provided consulting services on a voluntary, unpaid basis to station KVTT-FM, Dallas, Texas, a non-commercial educational FM station, as well as to KLTJ-TV, Dallas Texas, a commercial television station which broadcasts religious programming (United Exh. 5, pp. 3-4; Tr. 1779, 1853). He is presently an Associate Member of the Korean First Baptist Church of Dallas, Texas (United Exh. 5, p. 4), and for the past seven years, he has been involved in the production of a two hour Christian radio program broadcast weekly in the Korean language on KVTT-FM, which is produced by the Korean First Baptist Church in cooperation with other churches in the community (United Exh. 5, pp. 4-5). Since 1973, Dr. Kim has devoted an average of approximately 100 hours a year to his activities with the Korean First Baptist Church of Dallas and he has not received compensation for any of his activities with the church (*Id.*). Dr. Kim has also assisted in obtaining and airing religious programming from Korea (United Exh. 5 p. 5), and between the years 1973 and 1977, he organized and conducted seminars for the discussion of the public affairs of Korea directed to young people of Korean parentage (*Id.*). Since 1975, Dr. Kim has been active in the Korean Society of Dallas and Fort Worth, which provides educational and informational services to the Korean community (United Exh. 5, p. 6). The Society began as a program of the Korean First Baptist Church and Dr. Kim's activities for the Society and the church overlap substantially (*Id.*). The hours that Dr. Kim devotes annually to the activities of the Society is included in the total amount of hours devoted to church activities (*Id.*). Dr. Kim is also an active member of the Canyon Creek Baptist Church, Richardson, Texas where he is involved in a prayer group as well as youth guidance activities (United Exh. 5, p. 7) and he is a former member of the YMCA of Plano, Texas (United Exh. 5 p. 7), where he served between 1973 and 1979 as an organizing member of a child/parent group known as "Indian Guides" which promoted ideal parent/child relationships and Christianity (*Id.*). Dr. Kim also served as a coach for the YMCA's sports programs (*Id.*, Tr. 1782), and he devoted approximately 30 hours a year to these activities for the YMCA.

49. Since 1979, Dr. Kim has served as President of Lone Star Electronics Company (Lone Star), Prosper, Texas (United Exh. 5, p. 2) and he owns 100 percent of its stock (Tr. 1804). As President, Dr. Kim oversees all of the company's operations (United Exh. 5, p. 2). If United is the successful applicant, Dr. Kim will resign as President of Lone Star but will remain a director and serve as a consultant to the company.

Conclusions of Law

50. United is a limited partnership, with Dr. Kim as the sole general partner and the Messrs. Line, Kang, and Lee as the limited partners. Dr. Kim initially contacted Mr. Line regarding the application (Tr. 1740), and the decision to form a limited partnership was reached at a meeting between Dr. Kim and Mr. Line (Tr. 4913). Mr. Line, in turn contacted the other limited partners, Mr. Kang and Mr. Lee (Tr. 1741 4861, 4911). The Limited Partnership Agreement was drawn up by Dr. Kim and Mr. Line (Tr. 1750), and Mr. Line, an attorney licensed to practice in the State of Texas, supplied the prototype for the Agreement (Tr. 4927) executed the Agreement, and reviewed it to make sure that it conformed with Texas law (Tr. 4914). Mr. Line then filed it with the Secretary of State of the State of Texas (Tr. 4914, 4938). Mr. Line also serves as United's registered agent for service of process, and his office is the principal place of business for the applicant until the construction permit is granted (United Exh. 2, pp. 9-10; Tr. 1835). In addition, Mr. Line looked

at the station's proposed tower site for Dr. Kim (Tr. 4926) arranged for publication of applicant's local notice, and selected the attorney to serve as public file officer for United (Tr. 4926, 4938).

51. Subsequent to the initial meeting between United's principals, Dr. Kim and the limited partners met at Mr. Line's home to execute the Limited Partnership Agreement (Tr. 4924). Dr. Kim discussed the contents of the proposed document with his partners, describing the EEO program and his programming ideas (Tr. 1754-55), and the partners discussed these matters and agreed that they would establish and maintain ongoing discussions with the citizens and leaders of the community regarding programming for the station (Tr. 1755-56). They also agreed on the number of hours of programming for the station and that its programming would conform with the so-called "Fairness Doctrine" (Tr. 1756). The costs of the construction and operation of the station were also discussed (Tr. 1761) as well as the means by which United would obtain the necessary financing to meet these costs.

52. The partnership held regular meetings, approximately once a month, through 1986 at a restaurant owned by one of the principals (Tr. 1743, 1756, 4950). Dr. Kim would bring the limited partners up to date with respect to the progress of the application at these meetings including whatever testimony had been presented and whatever documents had been disclosed were made available to the partners (Tr. 1757, 4868, 4950). Dr. Kim would also discuss plans for the actual construction of the station, and he would mention the need for additional contributions for the prosecution of United's application at these meetings (Tr. 1757, 4882 4950). The principals met three or four times during the year 1987 (Tr. 4949). An amendment to United's application reflecting United's intention to provide Korean and other Asian language programming (Tr. 1765) was the result of a group discussion among all the principals during one of these meetings at which all agreed to file the amendment (Tr. 1767). The amendment was reviewed by all of United's principals prior to its filing.

53. United's limited partners have all made additional financial contributions to the partnership (Tr. 4882, 4931, 4950, 4882) in the form of additional infusions of capital rather than loans to the applicant (Tr. 4884, 4930, 4931). Furthermore, all have agreed that they will jointly provide whatever funds are necessary for the initial construction and operation of the station (United Exh. 2, p. 10, Section 7; Tr. 4962-63, 4899, 4905), although the Partnership Agreement itself states that no additional contributions are required from the limited partners (United Exh. 2, p. 52, Section 81).

54. Dr. Kim currently spends 60 hours a week at Lone Star Electronics, a company which he founded (Tr. 1771). He is currently President and the sole manager of the company (Tr. 1774). Virtually 100 percent of Dr. Kim's income is derived from his ownership and management of Lone Star (Tr. 1775), and he has no other outside business interests (Tr. 1775). Dr. Kim testified that it is possible that he will sell all or most of his stock in Lone Star if United's application is granted (Tr. 1832). However, he has not decided how much he will sell or retain and he will not dispose of any portion of his interest in the company until United receives the permit (Tr. 1805). Dr. Kim indicated, however, that he will not sever all connections with Lone Star, but will remain on Lone Star's Board of Directors (Tr. 1772-73). Although he will not serve as President of Lone Star, he will serve in an advisory capacity if a particular friend becomes president (Tr. 1771), and he will continue to do some consulting work on ongoing projects (Tr. 1774).

55. No diversification demerit will be assessed against United or any partner, general or limited, since no party to the United application has any interest in any medium of mass communications.

56. The Commission has repeatedly held that for ownership attribution purposes, a limited partner must have no material involvement in or influence or control over the management or operation of the partnership's affairs. In order to reach such a determination it is necessary to look at how the partnership has actually conducted its affairs. A review of the past dealings of this partnership makes it clear that the moving force behind United's application is Dr. Kim. However the limited partners have also had significant roles in prosecuting the application, have been consulted by Dr. Kim on a regular basis with respect to matters of substance regarding that application, and have made additional capital contributions to the enterprise when requested to do so, although the Partnership Agreement itself specifically states that no additional contributions from the limited partners are required (United Exh. 2, p. 52, Section 8.1). The financial obligations assumed by United's limited partners more closely resemble those of a general partner. United's representation that its limited partners will play passive, non-participatory roles in the management and control of United's business is simply not credible in view of United's past history which demonstrates that they have participated actively in prosecuting United's application. United's claim of a 100 percent integration credit therefore will be reduced to account for the ownership interests of United's limited partners.

57. The integration credit awarded United for Dr. Kim's participation in the management of United's proposed station is qualitatively enhanced by his minority status, his residence within the service area of United's proposed station, and his involvement, to a moderate to substantial degree, in the civic affairs of the service area. United is entitled to a slight further enhancement of his integration credit for his past broadcast experience as a consultant to broadcast facilities in the Dallas, Texas area.

58. Although Dr. Kim will not sever all ties with Lone Star there is no evidence in the record that the limited role that he envisions for himself at Lone Star, in the event that United is the successful applicant, will interfere with his integration commitment to United.

SOUTHWEST COMMUNICATIONS, LTD.

Findings of Fact

59. Southwest is a Texas limited partnership composed of the following partners:

Name	Position	Equity Interest
Paula A. Wiley	General Partner	10%
David H. Wagner, Jr.	Limited Partner	90%

Diversification

60. Southwest and Ms. Wiley have no interest in or connection with any medium of mass communications (Southwest Exh. 2). David H. Wagner, Jr. has a 12.24

percent equity interest as a nonvoting shareholder in Metro-Crescent Communications, Inc., the licensee of station WJZY Belmont, North Carolina and a 20 percent equity interest as a nonvoting shareholder in Caro Corp., the permittee of a new UHF station in Charleston, South Carolina.

Best Practicable Service

Paula A. Wiley

61. Paula A. Wiley, a Black female, proposes to serve as Southwest's General Manager on a full-time basis, devoting a minimum of 40 hours per week to her duties at the station. Ms. Wiley will have overall responsibility for the station's operations as well as primary responsibility for the station's finances and its programming as well as the station's Equal Employment Opportunity program (Southwest Exh. 3, p. 1).

62. Ms. Wiley has resided within the Grade B contour of Southwest's proposed station since August 1981. She will, however, become a resident of Arlington, Texas in the event that Southwest's application is granted (Southwest Exh. 3, p. 1).

63. Ms. Wiley has been a member of the Dallas chapter of Jack and Jill of America, Inc. since 1983, and in 1985 and 1986 served as Chairperson of its Beautillion Scholarship Committee (Tr. 1923, 2024-34) devoting between 350 to 400 hours in 1985 to this activity (Southwest Exh. 3, p. 5). From 1982 until the present, Ms. Wiley has been a member of the Dallas Independent School District Active Volunteers Association. She devotes approximately 40 hours a month to the Association and 20 hours a month as a member of the local fundraising committee for the United Negro College Fund (Tr. 1922-23). Ms. Wiley has also been an active member of the Democratic Party since 1976 (Tr. 1924, 1989), including service as an alternate delegate to the Democratic Party's State District Convention in 1984 (Southwest Exh. 3, p. 5; Tr. 2036) and she devoted approximately 50 hours to activities related to the Democratic Party in 1985 (Southwest Exh. 3, p. 5). From 1981 until 1982, Ms. Wiley was a member of the United Way of Dallas, and served on its funding committee and from 1985 to 1986, she was a member of the Dallas Black Chamber of Commerce (Tr. 1920, 2023).

64. Ms. Wiley has no prior broadcast experience.

Conclusions of Law

65. Ms. Wiley learned of the availability of Channel 68 in Arlington, Texas through David Wagner, Jr., Southwest's limited partner (Tr. 1891). Mr. Wagner told Ms. Wiley that the application needed a Black female with managerial experience (Tr. 1893-94), and it was at his suggestion that Southwest was organized as a limited partnership. He also suggested the division of equity in the enterprise (Tr. 1895-96). Mr. Wagner supplied Ms. Wiley with a proposed limited partnership agreement (Tr. 1909) which was executed without any changes in the agreement (Tr. 1909-10) two days prior to the exchange date for integration statements in this proceeding. The Limited Partnership Agreement was filed with the Secretary of State of the State of Texas twenty-two days after the exchange date for integration proposals.

66. Mr. Wagner also recommended communications counsel to Ms. Wiley (Tr. 1897), and he has had several discussions with Ms. Wiley with respect to financing for the station (Tr. 1997). Ms. Wiley supplies Mr. Wagner with an accounting of the bills incurred by the partnership (Tr. 2000). However, she prepared the Southwest application (Tr. 1900, 2003-04), acquired the financing (Tr. 1940), and with her husband established a public inspection file and arranged for publication of the legal notice of Southwest's application (Tr. 1904, 1938). In addition, Ms. Wiley established a bank account in Southwest's name with herself as sole signatory and has made her financial contributions to the partnership out of her own funds (Tr. 1941). Ms. Wiley keeps the partnership's books and records at her home, and she alone is liable for the partnership's expenses (Tr. 2000, 2010-11, 5004).

67. Section 14.1 of Southwest's Limited Partnership Agreement provides that Ms. Wiley shall have exclusive authority to manage and control the business and other affairs of the partnership (Southwest Exh. 4, p. 5), and Section 14.2 enumerates certain specific powers to be held only by Ms. Wiley, namely, to incur expenditures, handle employment matters, borrow money, place title to property in the name of the partnership, and prosecute and defend the partnership in any legal proceeding relating to the business or property of the partnership (Exh. 4, pp. 5-6). Section 13.1 prohibits the limited partner, Mr. Wagner from participating in the management and control of the partnership (Southwest Exh. 4, p. 5) and it also prevents him from transacting business on behalf of the partnership. He is specifically denied any power to act on behalf of or to in any way bind the partnership. Section 13.1 was amended on October 21, 1985, approximately four and one half months after the B cutoff date, to further insulate Mr. Wagner from the management of the partnership. However, Mr. Wagner retains the unfettered right to terminate the partnership on April 10, 1990 under Section 5 of the Agreement (Tr. 1960) and Mr. Wagner has the authority, under Section 16 to determine whether or not Ms. Wiley can withdraw from the partnership (Tr. 1916). Ms. Wiley can vote to make Mr. Wagner a general partner pursuant to authority contained in Section 15.1 of the Partnership Agreement (Southwest Exh. 4, p. 7; Tr. 1916).

68. In view of the significant role that Mr. Wagner played in the past and according to the terms of Southwest's Partnership Agreement may conceivably play in the future, it is totally unrealistic to view Mr. Wagner as an insulated limited partner whose interest in the venture is of no significance in determining actual control of the applicant and ultimately, the broadcast facility. His control has been and will be virtually total. It will be impossible for Ms. Wiley to act independently of Mr. Wagner when his right to terminate the partnership at will in 1990 is taken into consideration. That fact alone, disregarding for the moment the other evidence of record which illustrates his significant past roles in the enterprise, warrants the conclusion that Ms. Wiley is a mere figure head with no real authority or control over the venture. Accordingly the claim of any integration credit for Ms. Wiley will be denied and the Presiding Judge finds that Southwest is not entitled to any quantitative integration credit. In view of this finding it is unnecessary to consider what, if any, qualitative enhancements Ms. Wiley's integration proposal is entitled to.

JOHNSON TELEVISION, LTD.

Findings of Fact

69. Johnson is a limited partnership formed under the provisions of the Texas Uniform Limited Partnership Act (Johnson Exh. 3 p. 1). Charles Johnson is the sole general partner with a 33 1/3 percent equity interest in the partnership (Johnson Exh. 3, p 2), and the limited partners are David D. Hayslett and George H. Harder, III (Johnson Exh. 3, p. 2-3), who each hold a 33 1/3 percent equity interest in the limited partnership (Johnson Exh. 3, p. 2).

Diversification

70. Neither Johnson nor any of the principals of Johnson have any ownership interest in any broadcast station or other medium of mass communications (Johnson Exh. 1). Mr. Harder, a Johnson limited partner is Vice President of Chronicle Broadcasting of San Francisco, licensee of station KRON-TV, San Francisco, California. Chronicle Broadcasting of Omaha, Inc. is the licensee of station WOWT-TV, Omaha, Nebraska. Chronicle Broadcasting of Wichita, Inc. is the licensee of stations KUPL-TV, Garden City, Kansas, KAKE-TV, Wichita, Kansas, and KLBY-TV, Colby Kansas. All three licensees are subsidiaries of Chronicle Publishing Co.

Best Practicable Service

Charles Johnson

71. Charles Johnson, a Black American, will work full time or a minimum of forty (40) hours a week at the station as its General Manager. He will be responsible for the overall management and operation of the station (Johnson Exh. 1).

72. Since 1979, Mr. Johnson has lived in the Dallas, Texas metropolitan area (Johnson Exh. 1) which is within the Grade B contour of Johnson's proposed television station (Johnson Exh. 1). Mr. Johnson has been a member of the Dallas Chamber of Commerce since January 1984, the Dallas Black Chamber of Commerce since January 1984, and the Dallas Museum of Art since March 1984 (Johnson Exh. 1; Tr. 3156).

73. From December 1981 to November 1982, Mr. Johnson was Director of Public Relations for Sammon Communications of Dallas with responsibility for the company's public relations efforts (Johnson Exh. 1). He was previously employed as a television reporter between 1977 and 1981 for two television stations, one in Providence, Rhode Island and the other in Dallas, Texas.

74. Mr. Johnson's dues to the Dallas Chamber of Commerce as well as the Black Chamber of Commerce are paid by his employer, CCJ Enterprises, Inc. (CCJ) (Tr. 3099, 3127, 3149). Although Mr. Johnson proposes to spend 40 hours a week at the station, he will continue to work for CCJ. He currently spends two weeks a month outside the Dallas area on business for this employer.

Conclusions of Law

75. Johnson filed its application for Channel 68, Arlington Texas on April 22, 1985. The Johnson principals signed the first of two limited partnership agreements governing the partnership sometime in November 1985, after the date for exchanging integration statements, and there was no other prior written document that governed the voting power of the principals (Tr. 3086). A new limited partnership agreement was executed on March 3, 1986 (Tr. 3090). Mr. Johnson testified that he sought a new limited partnership agreement on the representation of counsel that a more *bona fide* agreement could be written (Tr. 3126). No formal partnership meetings were held prior to November 1985 (Tr. 3086-87).

76. Section 18.3(b) of Johnson's Limited Partnership Agreement requires that the general partner have prior written approval from a majority in interest of the limited partners before the following: he incurs on behalf of the partnership any capital expenditure if such expenditure, when aggregated with all other capital expenditures by the partnership during the calendar year in question, exceeds $5,000; borrows (whether through a new loan or the refinancing of an existing loan) on a secured or unsecured basis a principal amount of indebtedness if the sum of the principal amount of the new indebtedness, plus the aggregate outstanding principal balance of existing partnership indebtedness will exceed $10,000; or refinances any indebtedness of the partnership other than a renewal and extension which does not increase the annual costs for debt service, does not cause the interest rate on such renewed and extended financing to exceed one percent (1%) over the prior interest rate, and does not exceed the term of such renewed and extended indebtedness for a term greater than five (5) years. Mr. Johnson was unable to say whether or not he would have to get permission from the limited partners to buy any piece of major equipment or to borrow more than $10,000 (Tr. 3121-22).

77. The general partner's ability to transfer the whole or any portion of his partnership interest also requires prior written consent of all the limited partners which any limited partner can withhold in his sole discretion; and the general partner cannot voluntarily withdraw from the partnership. Furthermore, the partnership can be dissolved and terminated upon the written consent of all limited partners to dissolve. *See* Sections 20 and 21 of Johnson's Limited Partnership Agreement.

78. There was no binding limited partnership agreement until several months after the exchange of each applicant's integration proposal. At the time Johnson's integration pledge was made, the Commission lacked a reasonable assurance of true ownership required to credit an integration pledge. The essential combination of management responsibility and ownership interest, therefore, was missing as of that date. The subsequent execution of Johnson's Limited Partnership Agreement even if we assume that such a deficiency can be corrected after the date for submitting its integration proposal, has not supplied that reasonable assurance. Johnson's Limited Partnership Agreement clearly demonstrates that the limited partners are in a position to exert considerable control over the management of the proposed station's finances. Accepting a general partner's representation that he will have significant management responsibility at the station despite the limited partners' control over the purse strings of the station requires a greater suspension of disbelief than the undersigned is prepared to engage in. It is simply inconceivable that a general partner will be able to make management decisions at the station independently of the limited partners when those same partners wield such authority and control over the enterprise even to the extent of dissolving the entity. The Presiding Judge concludes therefore, that not only are the limited partners not properly insulated from the actual management and

control of the stock, but the general partner himself is not free to act independently of these individuals; and that these facts are fatal to any integration claim for Mr. Johnson. Accordingly, it is unnecessary to consider the degree to which any claimed integration credit for Mr. Johnson is qualitatively enhanced or whether or not Mr. Johnson's continuing employment with TM Communications, as its West Coast manager, renders his 40-hour commitment to the Johnson station unrealistic.

79. Since Mr. Harder is not a true passive investor, his position as Vice President of Chronicle Broadcasting in San Francisco is a media interest attributable to Johnson.

BRISCOE BROADCASTING, LTD.

Findings of Fact

80. Briscoe is a limited partnership organized under the Texas Uniform Limited Partnership Act. The structure and the principals of Briscoe are as follows:

Name and Address	Office/ Position	Percent Ownership
Briscoe Broadcasting, Inc.	General Partner	51%
Leonard E. Briscoe	Limited Partner	24.5%
Edward Briscoe	Limited Partner	24.5%

81. Rosanna Briscoe owns 1,000 shares of Briscoe Broadcasting Inc. (the Corporation) and she is the sole director, president, vice president/secretary and treasurer of the Corporation (Briscoe Exh. 1, p. 1).

Diversification

82. Briscoe Broadcasting, Ltd., Briscoe Broadcasting, Inc. Rosanna Briscoe, and Edward Briscoe do not have any interest in any broadcast stations or other media, and they do not have any interest in any pending application before this Commission (Briscoe Exh. 1, p. 2).

83. However, Leonard Briscoe, one of Briscoe's limited partners, has a minority interest in certain low power television applications and construction permits. If Briscoe's application is granted, Leonard Briscoe will divest his interest in any and all low power television applications, permits, or entities (Briscoe Exh. 1, p. 2).

Best Practicable Service

Rosanna Briscoe

84. Ms. Briscoe, a Black female, proposes to serve as the station's full-time General Manager, devoting a minimum of 40 hours a week to her duties at the station.

85. Ms. Briscoe has lived her entire life within the area of the proposed station's Grade B contour (Briscoe Exh. 2, p. 1). In the event that Briscoe's application is granted, she will relocate to Arlington, Texas and maintain her principal and only residence in that city (Exh. 2, p. 1). Since 1979, Ms. Briscoe has served as a youth director for her church, and for the past three years has been a member of that church's Parish Council. She is also a member of the Fort Worth Chapter of Women in Communications and the Fort Worth National Association for the Advancement of Colored People (NAACP).

Conclusions of Law

Financial Qualifications and Certification Issues

86. As noted above, by *Memorandum Opinion and Order*, FCC 87M-1913, released on August 13, 1987, the Presiding Judge designated a financial qualifications issue against Briscoe. The burden of proceeding was placed on Native American and the burden of proof was placed on Briscoe by the same *Order*.

87. The evidence of record does not support a finding that Briscoe is financially qualified. Rosanna Briscoe, Briscoe's sole general partner, has never sought financing for the station (Tr. 3217-19). She relied simply on her father, Leonard Briscoe's oral representation that "I will do the financing." (Tr. 4009). However, on the date the application was filed, Leonard Briscoe did not have three million dollars in liquid assets (Tr. 5149), and he testified that he intends to fund the construction and operation of the proposed station to a major extent on borrowed funds (Tr. 5150). Although Leonard Briscoe discussed possible financing with two financial institutions (Tr. 5150-58), by his own admission no dollar amount (Tr. 5152), interest rate (Tr. 5152-53), or terms (Tr. 5153) have been discussed. Collateral for any potential loan was discussed but in only general terms (Tr. 5153, 5157-58), and there is no written documentation which corroborates his testimony as to the fact that these discussions occurred (Tr. 5154). He candidly admitted that to date he has not sought a reasonable assurance of financing because he considered it premature to do so, and it would not, in his words, "make sense to go and start discussing it" (Tr. 5150). He indicated that he preferred to wait until the construction permit is issued before he seeks financing (Tr. 5147-48).

88. Briscoe had the burden of proof under this issue. The record lacks any evidence of record that Briscoe had or indeed has, even at this late date, a reasonable assurance of the availability of the necessary funds to construct the proposed facility at Arlington and operate the station for three months without revenues. Briscoe therefore, is found to be financially unqualified to be the Commission's licensee for the broadcast facility on Channel 68 in Arlington, Texas.

89. In signing Briscoe's application for Channel 68, Ms. Briscoe certified to the applicant's financial qualifications. Although Ms. Briscoe had a clear understanding of the meaning of the financial certification section of the application, (Tr. 5053-54, 5060), her certification was based, according to her testimony, solely on the oral commitment from her father referenced above (Tr. 4009), and her confidence in her father's ability to obtain the necessary financing; a certitude based on her general knowledge of her father's financial status (Tr. 5062-63, 5097-98, 5111, 5126). Ms. Briscoe made no specific effort to verify her father's ability to finance the station, although she had access to her father's financial records (Tr. 4016-17, 5126).

90. Ms. Briscoe also lacked a budget for the station or any definite figures for the costs of the construction and operation of the station at the time she certified to the applicant's financial qualifications (Tr. 5084). Although she had a very rough estimate of the overall costs of the

project, somewhere between six and seven million dollars (Tr. 3186, 5079), she lacked any documentation upon which to base that certification (Tr. 5062-63, 5111).

91. The record is clear, therefore, that at the time she certified to Briscoe's financial qualifications, Ms. Briscoe lacked a reasonable basis for doing so since she was without any documentation to support that claim. Her certification, therefore, amounted to a misrepresentation of a significant matter to this Commission constituting a clear abuse on her part of the Commission's processes, further warranting Briscoe's disqualification. ***Las Americas Communications, Inc.*** 1 FCC Rcd 786, 787-89 (Rev. Bd. 1986), ***Tulsa Broadcasting Group,*** 2 FCC Rcd 6124 (Rev. Bd. 1987).

92. Although Briscoe has been found to be disqualified to be a Commission licensee on two separate grounds, comparative findings will be made with respect to Briscoe's application in the event that its disqualification is overturned on appeal.

Comparative Issues

93. The Briscoe application is in reality a family proposal with Rosanna Briscoe, herself, playing a very minor role in the preparation and prosecution of the application. All bills for the enterprise are directed to and paid by Briscoe Enterprises, Ltd., the family business (Tr. 5197). Ms. Briscoe has no authority to sign checks on Briscoe Enterprises, Ltd.'s account (Tr. 5198), and all bills are directed to the bookkeeper for Briscoe Enterprises, Ltd. (Tr. 3178-79). According to Ms. Briscoe, the family works together (Tr. 4011); a view echoed by Leonard Briscoe, Rosanna's father, who testified that he views the applicant as another family venture by Briscoe Enterprises, Ltd. (Tr. 5200-01).

94. Leonard Briscoe learned of the availability of Channel 68 from an attorney, Clarence McKee (Tr. 4007, 5193-94). Mr. Briscoe signed the check for Rosanna Briscoe's capital contribution to the enterprise (Tr. 3191-92) and he also wrote the check for the local public notice (Tr. 3189). Although Ms. Briscoe located the owner of the applicant's proposed antenna site (Tr. 3188), she did not know if Briscoe's studio would be located at that site (Tr. 5083). Furthermore, she was unaware of Leonard Briscoe's informal contacts with financial institutions on behalf of Briscoe (Tr. 5117), and she was unsure if there was a separate bank account for Briscoe's corporate general partner (Tr. 3214). Leonard Briscoe periodically discussed the venture with Rosanna Briscoe (Tr. 5195) as well as a broad range of matters concerning the application with Mr. Wood, counsel to Briscoe Enterprises, Ltd. (Tr. 5146, 5148). Leonard Briscoe and the other limited partner, Edward Briscoe, received carbon copies of correspondence between communications counsel and Ms. Briscoe (Tr. 3178, 3192-93).

95. Ms. Briscoe's claim that as the sole owner of Briscoe's general partner she is entitled to a 100 percent integration credit is clearly without merit. Although she intends to be involved in the station in a management capacity, her pattern in the past has been to rely to a significant extent on the limited partners, as well as on counsel for the family business, Darrell Wood (Tr. 5195), in making decisions affecting the proposal. The Presiding Judge considers it highly unlikely that this pattern would be reversed in the future assuming that Briscoe becomes the licensee for the Arlington facility. The testimony of the principals supports the conclusion that Briscoe would remain a family operation. The Presiding Judge finds, therefore, that at the very most Briscoe is entitled to a quantitative integration credit of 51 percent which represents the general partner's share of equity in the applicant. However, in view of Ms. Briscoe's, for the most part, hands off approach to prosecuting the application, it is doubtful whether she will be willing to assume full management responsibilities at the station. Any quantitative integration credit awarded Ms. Briscoe is qualitatively enhanced by her minority status and her gender, and her past residence within the Grade B contour of the proposed station as well as her commitment to move to Arlington in the event that Briscoe is the successful applicant.

96. Briscoe has no cognizable interests in any medium of mass communications.

CHANNEL 68, NORTH TEXAS TELEVISION LIMITED PARTNERSHIP

Findings of Fact

97. North Texas is a limited partnership organized under the laws of the State of Texas (North Texas Exh. 1, p. 1). The sole general partner of North Texas is North Texas Television, Inc. (NTT) (North Texas Exh. 1, p. 1). NTT is a Texas corporation (North Texas Exh. 1, pp. 84-89) and Gloria Castro is its president, sole director, and sole shareholder (North Texas Exh. 1, p. 86, Exh. 3, p. 1). The limited partners of North Texas are Mark Stabler and John Webre (North Texas Exh. 1, pp. 1, 3, 5 11, 12, 15, 16, 56-60).

98. Initially, NTT owned a 10 percent equity interest in the applicant (North Texas Exh. 1, pp. 1). However, by an amendment filed August 20, 1986, North Texas reported that NTT's equity interest in the applicant had increased from 10 to 20 percent (North Texas Exh. 1, pp. 1 77-83). NTT was not required to pay any additional capital contribution (Tr. 4083). From the day the application was filed until September 17 1987, Mark Stabler held a 17.5 percent equity interest in North Texas and John Webre a 2.5 percent equity interest (North Texas Exh. 1, pp. 1, 5 60; North Texas Exh. 7, p. 1; North Texas Exh. 8, p. 1). A total of 70 percent of the equity was unsold. On September 17, 1987 an amendment was filed reflecting an increase in Webre's equity interest from 2.5 percent to 62.5 percent (North Texas Exh. 9, pp. 4, 7-10; North Texas Exh. 7, p. 1).

Diversification

99. The applicant, the general partner NTT, and Gloria Castro have no ownership interest or association of any kind with any medium of mass communications (North Texas Exh. 2, p. 1). However, Mark Stabler, a North Texas limited partner, served as a director of Mt. Baker Broadcasting Co., Inc. (Mt. Baker), permittee of Channel 24, Anacortes Washington from June 17, 1985 until March 13, 1986 (North Texas Exh. 8, p. 2). The station was not on the air during the period of Mr. Stabler's directorship (Tr. 4773), and the construction permit for Channel 24 Anacortes, Washington has since been revoked. Mr. Stabler and his wife own jointly 250 shares out of a total of 24,000 shares of stock in Mt. Baker (North Texas Exh. 8, p. 2). Their shares of stock were acquired on October 31, 1986 (*Id.*, and attachment there-

to). Since February 20 1986, Mr. Stabler has been a director and secretary/treasurer of West Coast United Broadcasting Co., Inc. (West Coast), the licensee of Channel 38 in San Francisco, California (North Texas Exh. 8, p. 3; Tr. 4773-74;) although he has never had an equity interest in West Coast (Tr. 4773-74). Mr. Stabler's wife owns as her own separate property 1500 shares of West Coast, which amounts to 6.25 percent of all outstanding shares of West Coast (North Texas Exh. 8, p. 3; Tr. 4774-75). Mr. Stabler has no rights to this stock (Tr. 4774, 4828).

Best Practicable Service

Gloria Castro

100. Gloria Castro, a Hispanic female, proposes to serve as the full-time General Manager of the station, devoting a minimum of 40 hours a week to her duties at the station (North Texas Exh. 3, p. 3). Ms. Castro will be responsible for supervising the day-to-day operations of the station and all station personnel and for the hiring and firing of the station's employees, including department heads. Ms. Castro will formulate and implement station policy regarding the station's programs sales, community service activities, and promotions, and she will also oversee the technical aspects of the station (North Texas Exh. 3, p. 1).

101. Ms. Castro moved to Dallas, Texas in 1944 and has lived within the Grade B contour of her proposed station continuously since then (North Texas Exh. 4, p. 1; Tr. 4027). She has been an active member of the Dallas Hispanic Chamber of Commerce since 1980 and between September 1984 and August 1985, she served in a number of positions with that organization including that of president. In addition, Ms. Castro served on the Board of Directors of the Dallas Volunteer Center between June 1985 and June 1987; as a member of the Private Industry Council, Dallas, Texas between December 1985 and December 1987; and as a participant in the Dallas Alliance Task Force, Project "The State of Intergroup Relations in Dallas" between September 1985 and 1986. Ms. Castro also served on the Board of Directors of the Science Place between November 1985 and October 1987, and as a member of the Board of Trustees of the Greenhill School between February 1985 and February 1987. She also spent a few hours in August 1985 as a member of a selection panel charged with nominating four top working women of Dallas and eight hours as a committee member for a charitable golf tournament and as a member of the Executive Female Advisory Council (North Texas Exh. 4, pp. 1-3). Ms. Castro has also addressed various civic organizations on a number of issues, including topics specifically oriented to Hispanics and/or women (North Texas Exh. 4, p. 3).

102. Ms. Castro has no prior broadcast experience.

Conclusions of Law

103. Counsel for North Texas initially informed John Webre of the availability of the channel at Arlington, Texas. Mr. Webre, in turn subsequently got in touch with Mark Stabler, North Texas' other limited partner. It was Mr. Webre who contacted Gloria Castro and referred her to communications counsel (Tr. 4037). At the conclusion of her first face-to-face meeting with counsel, Ms. Castro still had not decided whether or not to become involved in the application (Tr. 4039) and it was only after a second meeting with communications counsel that she agreed to go forward with the application, after she clarified her role at the station and the scope of her duties as applicant and the eventual licensee (Tr. 4039-41).

104. According to her testimony, Ms. Castro relied upon the advice of counsel in preparing the application (Tr. 4041), and at some point, her communications counsel recommended Michael Parker as a consultant (Tr. 4040) who would prepare cost estimates and assist in obtaining financing (Tr. 4054). Communications counsel also recommended local counsel (Tr. 4043, 4132) and he made the initial efforts to locate both of North Texas' transmitter sites (Tr. 4084). Mr. Parker brought the financial documentation to Mr. Stabler's office and the Messrs. Parker and Stabler called communications counsel in Washington to discuss the material. Ms. Castro was not involved in that call (Tr. 4718-19). Communications counsel provided Mr. Stabler with Mr. Webre's balance sheet (Tr. 4646), and Ms. Castro was unaware whether or not the limited partners have provided balance sheets (Tr. 4051-52). Mr. Parker was ultimately fired by Ms. Castro for failing to provide the agreed upon services (Tr. 4054, 4130).

105. Mr. Webre has assumed responsibility for the partnership's debts beyond the amount of his capital contribution (Tr. 4689), and Mr. Stabler secured the financing from North Texas' lending institution, for which he will be paid a fee in the event that the financing arrangement is implemented (Tr. 4719). According to his testimony, Mr. Stabler's only conversation with Ms. Castro with respect to his efforts to secure financing for the station was during a 10 to 15 minute conversation with her concerning other matters, financing having been discussed only in general terms (Tr. 4051, 4722-24).

106. Ms. Castro opened the bank accounts for both the applicant and the corporate general partner, and she is the sole signatory on those accounts. In addition, she met personally with the landowners of the North Texas' two transmitter sites, and discussed the terms of the lease or purchase agreement with the limited partners (Tr. 4084, 4148). In addition, she established and maintains the public inspection file, and she had the responsibility for seeing that local public notice for North Texas was published.

107. Ms. Castro has exclusive control over whether or not any additional general or limited partners are added to the applicant (Tr. 4151-53; North Texas Exh. 1, pp. 8, 31, 45-46), and her equity in the venture cannot be reduced to less than 20 percent without her consent or a conscious decision on her part to do so. Furthermore, the Limited Partnership Agreement cannot be amended to otherwise provide for the dilution of the corporate general partner share without her consent (North Texas Exh. 1, p. 53, para. 28(b)). In the event that the corporate general partner decides to admit additional partners, Ms. Castro, as owner of the corporate general partner, may maintain her 20 percent equity interest in the applicant by simply making an additional capital contribution equal to 1 percent of the total capital contribution requested by her of the additional limited partners (North Texas Exh. 1, pp. 30-35, 49-50). Since a decision to admit or to exclude additional partners would not constitute an amendment to the Partnership Agreement it would not require the consent of the limited partners (North Texas Exh. 1, pp. 8, 31-32, 45, 49-50, 52, 61-62, 66 (para. 8); Tr. 1452-53). Ms. Castro testified that she will not admit any

new partners if it would result in a reduction of the corporate general partner's share in the equity of the applicant. In July 1985, a month and a half after the B cutoff date, North Texas amended its application to restrict the authority of the limited partners to remove the general partner and thereby dissolve the partnership (*see*, Article 9(g)(vi)). The limited partners presently can compel the general partner to resign only for a material default under a significant provision of the Limited Partnership Agreement.

108. There were several changes in North Texas' Limited Partnership Agreement. The first amendment dated July 1985 restated Article 11 of the original Limited Partnership Agreement to more clearly define the limitations or the activities of its limited partners (North Texas Exh. 1, pp. 63-76). The second amendment to the Agreement raising the general partner's equity interest from 10 to 20 percent, occurred in August 1986 and was disclosed after the exhibit exchange date and on the eve of the initial hearing session in this case (Tr. 129-130). The Agreement was amended for the third time after the September 1987 hearing session to reflect Mr. Webre's acquisition of the previously unsold limited partnership equity.

109. The fact that a significant amount of North Texas' equity was not sold as of the B cutoff date has no effect on North Texas' legal standing before this Commission. It was a complete, functioning legal entity governed by a legally binding written partnership agreement. Any uncertainty as to the identity of any additional limited partners has been removed by the purchase by Mr. Webre of the remaining equity in the applicant and the assignment of an additional 10 percent to the general partner.

110. Ms. Castro has relied to a significant degree on the advice of experts in preparing her application as well as in formulating her plans for the proposed station. Although Ms. Castro is an executive with a major corporation, she has no experience in broadcasting. It appears perfectly reasonable, therefore, that she would rely on the advice of these individuals, none of whom have been shown to have an ownership interest in the proposed facility. Ms. Castro wisely picked the brains of professionals in the field in order to determine what course of action she should take (Tr. 4039-42). There is nothing in the record to indicate that Ms. Castro, having acquired the necessary information, acted in a manner inconsistent with her position as sole owner of North Texas general partner. Her reliance on the advice and assistance of counsel and a broadcast consultant and other experts does not reflect adversely on her claim of active, day-to-day control over the entity. The fee arrangement with both counsel and Mr. Parker, although out of the ordinary, has not been shown as conferring anything more than a strong interest in the outcome of the proceeding, and in no way diminishes the union of ownership and control required to credit Ms. Castro's integration pledge.

111. Section 9(g)(i) of North Texas' Limited Partnership Agreement provides for the removal by the limited partners of the general partner in the event of a material default on the part of the general partner. The Review Board in ***Independent Masters, Ltd.***, 104 FCC 2d 178, 189 (Rev. Bd. 1986) concluded that such a condition "provides some reasonable assurances" that the general partner cannot be summarily or arbitrarily removed by the entity's limited partners. There is no evidence of record to refute Ms. Castro's claim that she is in control of the partnership and she will control the broadcast facility at Arlington.

112. The evidence of record supports the conclusion that the applicant's limited partners, Mr. Stabler and Mr. Webre are properly insulated from any degree of control or active participation in the affairs of the entity. The sole action undertaken by these individuals in the furtherance of their application, apart from signing documents and providing personal information, was Mr. Stabler's efforts in securing a letter of reasonable assurance of the necessary financing and agreeing, in the event that North Texas is the successful applicant, to finalize arrangements for the loan with the financial institution; a role not inconsistent with that generally assigned to limited partners who are frequently the source of the necessary funding for a venture. ***See, Ownership Attribution***, 58 RR 2d 604, 613 (1985).

113. In light of the above finding that North Texas' limited partners are properly insulated, Mark Stabler's positions at West Coast Broadcasting Co., Inc., the licensee of Channel 38 in San Francisco California and Mrs. Stabler's ownership of 1500 shares of West Coast stock or 6.25 percent of all outstanding shares, are of no decisional significance.

THE LOURAY CORPORATION

Findings of Fact

114. The LouRay Corporation is a Texas corporation. Louis J. Zapata is President, a director, and holder of 2,000 shares of Class A voting stock of LouRay, or 33 1/3 percent of LouRay's voting stock and 20 percent of the equity of the company. Quincy Rayline Binion and Dionne Ann Bagsby each hold 33 1/3 percent of the outstanding voting stock in LouRay and own a total of 40 percent of the equity. Warren W. Binion Warren S. Binion, and Gary S. Smithwick own all of the issued and outstanding nonvoting stock of LouRay (4,000 shares of Class B nonconvertible common), or 40 percent of the equity of LouRay (LouRay Exh. 1, p. 1). Warren W. Binion is the husband of Quincy Rayline Binion (Tr. 4183) and Warren S. Binion is the son of Quincy Rayline Binion (Tr. 4210).

Diversification

115. Neither LouRay, Ms. Binion, Ms. Bagsby, nor Mr. Zapata have any interest in or association with any medium of mass communications. Gary S. Smithwick, a nonvoting shareholder, has a 4 percent voting stock interest in Radio Intermart Corporation, the permittee of an as yet unbuilt station, WRFM(FM), Homestead, Florida. [3] Ms. Binion, Mr. Zapata, and Ms. Bagsby's father, James Bagsby, are members of the Board of Directors of Texas Educational Network, Inc. which holds certain rights with regard to the presentation of educational television programming on the facilities of KETE, Channel 31, Fort Worth, Texas a station that is presently not on the air (LouRay Exh. 1, pp. 1-2; Tr. 4180-83).

Best Practicable Service

Louis J. Zapata

116. If LouRay is the successful applicant, Mr. Zapata proposes to serve as General Manager of the station on a full-time basis, devoting at least 40 hours a week to his duties at the station for an indefinite period of time. As General Manager, he will be responsible for the management of the station's day-to-day affairs.

117. Mr. Zapata, an Hispanic male, has lived in Fort Worth Texas his entire life. He served as the President of the Human Relations Commission in 1973, 1974 and 1975, as Chairman of the Fort Worth Manpower Consortium, and as President of the Neighborhood Youth Corps. He is presently active in the Fort Worth Chamber of Commerce, the Mexican-American Chamber of Commerce, and the North Fort Worth Business Association. Mr. Zapata also served for three years as Council Representative on the Fort Worth Municipal Employees Retirement Board (LouRay Exh. 1, pp. 2-3), and he was elected President of Region VII Chapter of the Texas Municipal League after serving two years as Vice President of the Region. He is also a former member of the Legislative and Intergovernmental Relations Committee of the Texas Municipal League serving on the Program Committee, and he has been an active participant on the Training Committee, where he provided assistance in developing multimedia training modules for government officials. In addition, Mr. Zapata served on the House Committee of the Criminal Justice System of Texas which is charged with reviewing all aspects of this subject (LouRay Exh. 1, pp. 3-4). He has also been active in the National League of Cities with membership on both the Steering and Policy Committees for Community and Economic Development, where he aided in the creation of the National League of Cities Minority Caucus Committee and served on the interim board of this committee. Mr. Zapata is also a past President of the National League of Cities Elected Spanish Speaking Officials Group (LouRay Exh. 1 p. 4).

118. Mr. Zapata has no broadcast experience.

Dionne Ann Bagsby

119. Ms. Bagsby, a Black female, will serve as Program Director of the proposed station on a full-time basis, devoting at least 40 hours a week to her duties at the station. Included among her responsibilities will be the implementation of a program schedule, and the formulation and administration of the station's programming. In addition, Ms. Bagsby will be responsible for the hiring and firing of personnel as well as supervising the program department's personnel and overseeing communications between the station and the community, including the ascertainment of community problems, needs, and interests (LouRay Exh. 2 p. 2).

120. Ms. Bagsby lived in Fort Worth, Texas from 1967 to 1975, a point within the city-grade contour of the television station (LouRay Exh. 2, p. 1).

121. While attending Clark College, Atlanta, Georgia, Ms. Bagsby wrote a script, formulated slogans, did art work for billboards updated media contacts, wrote radio spots, handled newsletters, and composed and designed a program for a Junior Achievement Celebration. In 1983 while still at Clark College, Ms. Bagsby created and produced a magazine format television show called "Let's Talk," and she later wrote edited and produced a show called "News Journal" which was aired on cable Channel 35.

Quincy Rayline Binion

122. In the event that LouRay's application is granted, Ms. Binion will serve as Business Manager of the proposed station on a full-time basis, devoting a minimum of 40 hours a week to her duties at the station. Her responsibilities and duties will include the management of the financial affairs of the station, as well as the supervision of the Sales Manager and the station's accounting department. In addition, she will work with the General Manager and Program Director in formulating the business policies of the station, and, in consultation with the Sales Manager, will hire and fire employees in the sales and accounting departments (LouRay Exh. 3, p. 2).

123. Ms. Binion lived in Fort Worth, Texas between 1974 and 1985. She is a former member of the local Parent Teachers Association in Fort Worth, and from 1960 to 1973 held membership in the Fort Worth Women's Club of which she is a past Program Chair. From 1961 to 1973 she was a member of the University Place Book Club in Fort Worth and a former Program Chair and Committee Chair for that organization (LouRay Exh. 3, pp. 2-3).

124. Ms. Binion has no broadcast experience.

Conclusions of Law

125. The distribution of LouRay's equity is incomplete, and according to the Articles of Incorporation, existing shareholders have pre-emptive rights to require these additional non-issued or treasury shares of any class of stock pro-rata their share of equity (Arlington Exh. 5). It is conceivable, therefore, that the percentage of voting stock owned by the present voting shareholders may well be diluted if non-issued voting stock is purchased by nonvoting shareholders (Arlington Exh. 5); a significant factor in view of the fact that Mr. Smithwick LouRay's communications counsel and a nonvoting shareholder, has controlled the primary activity of the corporation to date by actively participating as counsel in every phase of the prosecution of the application, including attending, along with the other nonvoting shareholders, the Board of Directors' meetings (Tr. 4188).

126. There is little evidence in the record of any activity on the part of the voting shareholders which demonstrates that they were or are in control of the application. Mr. Zapata has done little more than pay for his stock. He, for example, played no role in obtaining financing for the proposed station or in locating a tower site (Tr. 4191). Ms. Binion, although she secured financing for the station, played no further role in the preparation and prosecution of the application. Ms. Bagsby has not performed any duties as an officer of the corporation (Tr. 4205) has not attended directors' meetings (Tr. 4187), lacks authority to sign checks (Tr. 4211), and did not participate in the preparation of the application (Tr. 4206). It is simply not credible that these individuals who have been so uninvolved in the preparation and prosecution of the application will, if LouRay receives the permit and license, take control over the management of the station.

127. The record is clear that persons other than the proposed integrated principals have been actively involved in prosecuting LouRay's application, and it is safe to

assume that they will continue to play an important role in running the station in the event that LouRay is the successful applicant. Mr. Smithwick has been an active participant in prosecuting the application from the start and the Binions', who are the husband and son of Quincy Rayline Binion, respectively, attended one or more meetings of the Board of Directors and were present when the third director, Dionne Ann Bagsby, was elected. Collectively, these non-integrated principals own 40 percent of the equity. In view of the past role played by Mr. Smithwick and the close familial ties between the Binions, it is unrealistic to conclude that they will not continue to be involved in the station's affairs to a degree that is inconsistent with their status as nonvoting shareholders. This conclusion is given further weight by the lack of any significant involvement on the part of the voting shareholders in prosecuting LouRay's application. Their representations that they will be 100 percent in control and that the nonvoting shareholders will not be involved in running the station is simply not credible. At the very most, therefore, LouRay is entitled to an integration credit which represents the amount of equity held by Mr. Zapata, Ms. Bagsby and Ms. Binion. However, Ms. Bagsby's total non-involement in the application process, including her failure even to pay for her shares in the applicant or otherwise be committed financially to the endeavor, warrants a denial of any credit for her integration pledge.

128. Mr. Zapata is involved to a significant degree in the civic affairs of his community. Ms. Binion's civic activities within the proposed service area ended in 1973, more than 25 years ago and is not sufficiently contemporary to be entitled to any credit. *See*, ***Northern Sun Corp.***, 57 RR 2d 1550, 1553 (Rev. Bd. 1985). Ms. Bagsby does not claim civic involvement in her community. None of the voting shareholders have any broadcast experience which would entitle their integration credits to further qualitative enhancement.

129. The only media interest chargeable to LouRay is Mr. Smithwick's four percent voting interest in an FM station in Homestead, Florida which is found to be only of slight decisional significance.

130. The programming rights on station KETE(TV), Channel 31, Fort Worth, Texas held by Mr. Zapata and Ms. Binion are of no decisional significance in view of the Commission's position that interests in non-commercial educational facilities generally do not count for diversification purposes (***Waters Broadcasting Corporation***, 88 FCC 2d 1213, 1218-19 (1981); ***Focus Television Co., A Joint Venture***, 56 RR 2d 1335, 1340 (Footnote 13) (Rev. Bd. 1984).

METROPLEX COMMUNICATIONS, INC.

Findings of Fact

131. Metroplex is a corporation organized under the laws of the State of Texas for the purpose of applying for, constructing and operating a television station on Channel 68 in Arlington, Texas (Metroplex Exh. 1 p. 1). The ownership interests of Metroplex's shareholders are as follows:

Name	Position	Equity Interest
Rosario Leal	President, Treasurer, Director	51% (510 voting shares)
Elizabeth Flores	Vice President, Secretary, Director	49% (490 voting shares)

(Metroplex Exh. 1, p. 1.)

Diversification

132. Metroplex and its shareholders do not have any ownership interest, either direct or indirect, in any broadcast station, or any other medium of mass communications (Metroplex Exh. 2, p. 1).

Best Practicable Service

Rosario Leal

133. Rosario Leal, a Hispanic female, will serve as General Manager of the station on a full-time basis. Her duties will be those normally associated with that position (Metroplex Exh. 3, p. 1; Tr. 4342-43). Ms. Leal will also administer and implement the Equal Employment Opportunity Program (Metroplex Exh. 3, p. 1).

134. Ms. Leal has never lived within the proposed service area of the Metroplex facility. However, in the event that Metroplex is granted the construction permit in this proceeding, Ms. Leal will move to Arlington, Texas (Metroplex Exh. 3, pp. 1-2).

135. Ms. Leal's prior broadcast experience includes service as a consultant at radio station KNSE, Ontario, California, as an Account Executive with radio station KRIO(AM), McAllen, Texas, and as Executive Producer at KCSN, Northridge, California. In addition, she is a former intern at television stations in Los Angeles, California as well as at radio stations KQXX(FM) - KIRT(AM), McAllen, Texas (Metroplex Exh. 3 pp. 3-4).

Elizabeth *Flores*

136. Ms. Flores, a Hispanic female, will serve as the station's full-time Station Manager, and she will be responsible for supervising the station's day-to-day operations (Metroplex Exh. 4, p. 1; Tr. 4342).

137. Ms. Flores has lived in Dallas, Texas, a point within the service area of the proposed station since 1979, and she will continue to live there should Metroplex receive the permit (Metroplex Exh. 4, p. 1). Ms. Flores has been an active member of the Dallas Chamber of Commerce since 1983 (Tr. 4373-75), the Community Development Advisory Committee of the City of Dallas from 1981 to the present, and the Friends of the Library Advisory Board, City of Dallas from 1984 to the present. In addition, she has been a member, since 1981, of the Mexican American Business and Professional Women, the Women's Issues Network since 1984 (Tr. 4382), the Dallas Area Women's Political Caucus since 1982 (Tr. 4383-84, 4401), the Texas Women's Political Caucus from 1983 to the present (Tr. 4384-86), the Dallas Hispanic Chamber of Commerce since 1982 (Tr. 4386, 4401), the Network of Hispanic Communicators from 1982 to the present (Tr. 4386-87), the Cable Access of Dallas, Inc. since 1985 (Tr. 4387-88, 4395), the Teatro Hispano de Dallas from 1985 to the present (Tr. 4388, 4402), the Maple Avenue Eco-

nomic Development Corporation since 1985 (Tr. 4389-90), and the Oaklawn Democrats from 1984 to the present (Tr. 4390, 4402). Ms. Flores also served in 1984 on the Dallas Citizens Counsel Multi-Racial Committee (Tr. 4375-76), on the Minority Business Enterprise Task Force for the City of Dallas from 1981-1983 (Tr. 4376) and the Mayor's Task Force on Child Care in 1984 (Tr. 4377), the Texas Federation of Business & Professional Women Job & Education Bank in 1980 (Tr. 4379-82), the League of United Latin American Citizens, LULAC in 1983, the Texas Peace and Justice Conference in 1986 (Tr. 4388-89), and the Anita Martinez Recreation Center Advisory Board between 1984 and 1985. She was also a Delegate to the Texas Democratic Convention in 1984 and in 1986 (Tr. 4390) and she also served in 1983 as Coordinator, Hispanics for DART for the Dallas Area Rapid Transit Campaign. In 1985 to 1986 Ms. Flores was on the Executive Board (Tr. 4390) and served as Chair for the Platform Committee for the Democratic Women of Dallas County (Tr. 4390). Ms. Flores was nominated to the Texas Women's Hall of Fame in 1984 (Tr. 4396) and she received the Notable Women in Texas Award and the Outstanding Young Women of America Award in 1983.

138. Ms. Flores currently is on a free-lance assignment as a producer and host of a weekly, half-hour public affairs program on station KTXA(TV), Channel 21, Arlington, Texas (Tr. 4370, 4394-95). She served in the past as a producer and host of a cable television program with Warner Amex Cable Communication, Inc, and as a journalism intern for stations KSAT(TV) and KTSA-KTFM, San Antonio, Texas where she produced public service announcements, researched news stories and wrote news copy (Metroplex Exh. 4, p. 3).

Conclusions of Law

139. Prior to the B cutoff date, Ms. Leal was a single individual applicant. However, she amended her application on that date to reflect that the applicant was now a corporation, Metroplex Media Inc., with Ms. Leal having a 51 percent voting interest in the corporation and Elizabeth Flores a 49 percent voting interest in the corporation. As of the B cutoff date, there was no written documentation in existence establishing the nature or percentage of Ms. Flores' ownership, and Ms. Leal and Ms. Flores did not subscribe to their shares for more than four months after the B cutoff date. The applicant was issued a Certificate of Incorporation by the State of Texas on August 16, 1985. However, the corporation did not actually come into existence until February 1986 (Tr. 4341) when it received $1,000 for the issuance of its shares of stock and it opened a corporate bank account (Tr. 4393).

140. As noted above, Ms. Leal informed the Commission on the B cutoff date of her intention to form a corporation in which she would own 51 percent of the voting stock and Ms. Flores 49 percent of the voting stock. The Articles of Incorporation were signed on July 11, 1985, only one month after the B cutoff date, and a Certificate of Incorporation was issued by the State of Texas on August 16, 1985, only two months after the B cutoff date (United Exh. 9). On October 23, 1985, Metroplex filed its integration proposal in which it reported that both Ms. Leal and Ms. Flores had executed binding subscription agreements (Charisma Exhs. 6 and 7). All parties to this proceeding, including this Commission, were therefore, on notice as of the B cutoff date of the changed nature of the applicant, and by the date for submitting integration proposals had been informed that the shareholders had executed subscription agreements for their shares of stock in the corporation. The Presiding Judge concludes therefore, that as of the B cutoff date, applicant, for comparative purposes, was a corporation composed of two stockholders, Ms. Leal and Ms. Flores with the percentages of ownership indicated above.

141. Both Ms. Leal and Ms. Flores have indicated their intention to serve at the station in a management capacity on a full-time basis. Both, however, failed to specify the number of hours that they will devote to their duties at the station. The Commission requires that a principal specifically identify the number of hours he or she will devote to the station, and a specific commitment of 40 hours or more is required for a full-time integration credit. (***Vacationland Broadcasting Co., Inc.***, 55 RR 2d 1299, 1304 (Rev. Bd. 1984.) Accordingly, both Ms. Leal and Ms. Flores will receive slightly less than a full-time integration credit for their proposals to work at the station since they neglected to specify the precise number of hours of those commitments. Both Ms. Leal and Ms. Flores have extensive past broadcast experience, and both are entitled to minority enhancement and gender preference, and in the case of Ms. Flores, further enhancement for her residence within the service area of Metroplex' proposed station. Ms. Leal's qualitative integration credit is increased by her intention to move to Arlington Texas in the event that Metroplex receives the permit.

142. Metroplex, Ms. Leal, and Ms. Flores have no cognizable interests in any medium of mass communications.

SAMMY A. THORNTON

Findings of Fact

143. Sammy A. Thornton is an applicant for the proposed television station on Channel 68 at Arlington, Texas. He is a sole proprietor.

Diversification

144. Mr. Thornton has no other broadcast or media interests.

Best Practicable Service

Sammy A. Thornton

145. Sammy A. Thornton will be employed at the station as General Manager on a full-time basis, working at least 40 hours a week. As General Manager he will be responsible for the day-to-day operations of the station, and he will supervise management personnel and make the ultimate decision on the hiring and firing of personnel. He will also make the final decision on all programming to be broadcast over the station (Thornton Exh. 1, p. 1; Tr. 4417).

146. Mr. Thornton has lived in the Dallas, Texas area for the past 30 years. He presently resides in Duncanville, Texas which is located within the city grade contour of the proposed station. Mr. Thornton has not been involved in civic affairs in the Dallas Texas area and he has no prior broadcast experience.

Conclusions of Law

147. The evidence of record supports Thornton's claim of a 100 percent quantitative integration credit for his proposal to serve full time, at least 40 hours a week as General Manager of the station. Thornton's integration credit is qualitatively enhanced by his residence within the service area of his proposed station.

148. Mr. Thornton's mother, Opal Thornton, holds a construction permit for a new television station on Channel 55 at Lake Dallas, Texas (Tr. 4413), a point located within the Grade B service area of Mr. Thornton's proposed facility (Joint Engineering Exhibit, pp. 6-7). Mrs. Thornton has lived with her son for a long period of time (Tr. 4414) but expects to move in the near future (Tr. 4414). According to Mr. Thornton he has spoken to his mother about her permit only briefly (Tr. 4414) but has not provided her with any financial assistance in connection with her application and will not assist her in the construction or operation of the station (Tr. 4414). There is no evidence of record to refute Thornton's claim that his station will operate independently of his mother's, and that he will have no control or interest in his mother's broadcast facility.

149. Sammy A. Thornton does not have any interest in or association with any media of mass communications.

NATIVE AMERICAN BROADCASTING COMPANY, A LIMITED PARTNERSHIP

Findings of Fact

150. Native American is a limited partnership organized under the laws of the State of Texas. Sandra Carol Blevins is the only general partner and Crystal M. Hilliard is the sole limited partner (Native American Exh. 1, p. 1). The general partner holds a 20 percent equity interest in Native American and the limited partner holds an 80 percent equity interest in Native American (Native American Exh. 1, p. 1).

Diversification

151. Native American and Sandra Carol Blevins have no ownership interest in any medium of mass communications. (Native American Exh. 1 p. 1).

152. Crystal Hilliard, the limited partner, holds 60 shares out of a total in excess of ten million shares of stock issued by John Blair & Company (Native American Exh. 1, p. 2). John Blair & Company owns and operates the following broadcast stations: KVIL AM & FM, Highland Park Texas; WIBC and WNAP(FM), Indianapolis, Indiana; WHDH and WZOU(FM) Boston, Massachusetts; WFLA AM & FM, Tampa, Florida; KSBW-TV, Salinas California; KSBY-TV, San Luis Obispo, California; KOKH-TV, Oklahoma City Oklahoma; WKAQ-TV, San Juan, Puerto Rico; and WSCV-TV, Fort Lauderdale Florida (Native American Exh. 1, p. 2). It also operates Blair Entertainment which is engaged in program syndication (Native American Exh. 1, p. 2). In the event that Native American is awarded a construction permit for Channel 68 at Arlington, Texas, Ms. Hilliard will divest herself of her ownership interest in John Blair & Company prior to the filing of an application for the license to cover the construction permit for Channel 68 in Arlington, Texas (Native American Exh. 1, p. 2).

Best Practicable Service

Sandra Carol Blevins

153. Ms. Blevins claims minority status as a Native American. She will serve as Station Manager of the station, and she will devote at least 40 hours a week to her duties at the station. Included among these duties will be the responsibility for developing the overall policy of the station, hiring key management personnel, and supervising the station's staff. In addition, Ms. Blevins will direct the employees of each organizational component and supervise and manage the budgetary and financial operations of the station (Native American Exh. 2, pp. 1-2).

154. Ms. Blevins resides in Plano, Texas which is within the 80 dBu contour of Native American's proposed television station (Native American Exh. 2, p. 1). She has lived in Plano, Texas since 1978 and will continue to live in Plano, Texas or at a point within the primary service area of the station in the event that her application is granted (Native American Exh. 2, p.2).

155. In 1984, 1985, and 1986, Ms. Blevins worked as a volunteer at the Annual Health Fair presented by the Richardson Medical Center Richardson, Texas (Native American Exh. 2, p. 3). She devoted approximately 8 hours of her time to each health fair and worked at two such fairs in 1986 (Tr. 4440). Since 1979, Ms. Blevins has been a founding member of the Women's Auxiliary of the Murphy Fire Department and Police Department, Murphy, Texas, spending approximately 30 hours a year on that activity (Native American Exh. 2, p. 3; Tr. 4438-39), and she has been an assistant to the leader of a Girl Scout troop since 1984. In addition, Ms. Blevins has been a member of the Band and Basketball Boosters of Plano East Senior High since 1985 (Native American Exh. 2, p. 3), and a member of the Dooley Elementary School PTA since 1981 (Native American Exh. 2, p. 3; Tr. 4459).

156. Between May 1985 and July 1986, Ms. Blevins was employed part-time both as a volunteer and a paid employee, five days a week for roughly two hours a day, as Special Assistant to the General Manager of the commercial radio station KTNS, Plano, Texas (Native American Exh. 2 p. 3; Tr. 4428, 4440, 4457). Ms. Blevins helped with the supervision and maintenance of the station's public file and EEO program, with the installation of a new program format and an analysis of the station's financial data, and with the implementation of employee policies and guidelines (Native American Exh. 2, p. 3).

Conclusions of Law

157. As of the B cutoff date, Native American was only an oral partnership, although the percentages of ownership of each principal had been agreed upon before that date (Tr. 4448). A formal, written partnership agreement was not drawn up until July 3, 1985 within 30 days of the B cutoff date (Native American Exh. 3, p. 1; Tr. 4429).

158. Ms. Blevins' husband, Isaac Blevins, approached her about the facility on Channel 68, Arlington Texas, although Ms. Blevins testified that she had expressed an interest in applying for a radio or television station prior to that time (Tr. 4428). Although Mr. Blevins was not involved in preparing or in reviewing Native American's application, he and Native American's engineer, Charles Crossno, suggested to Ms. Blevins the number of hours of operation of the station (Tr. 4442-43) as well as the staffing proposal for the station (Tr. 4441-42). He also made

the initial contact for the placement of the local public inspection file which he assembled (Tr. 4447), and Mr. Blevins took the local public notice to the newspaper in Arlington (Tr. 4446-47). In addition, Mr. Blevins, on his own, approached several banks about possible financing for the project on behalf of Ms. Blevins (Tr. 4435-36), and Mr. Blevins and the engineer helped Ms. Blevins obtain a transmitter site (Tr. 4461). Ms. Blevins herself, has never spoken to the owner of the proposed antenna site (Tr. 4461).

159. Mr. Crossno, the engineer, prepared the cost estimates for the station (Tr. 4476) and he discussed broadcast equipment with Ms. Blevins (Tr. 4446). The engineer presented her with a single cost figure which was not itemized (Tr. 4476) and Ms. Blevins made no independent effort to verify that figure on her own. Mr. Crossno also suggested James Hilliard to Ms. Blevins as an additional partner, mentioning that he might be able to assist her in preparing the application (Tr. 4424). Mr. Hilliard, in turn, referred Ms. Blevins to his daughter, Crystal Hilliard, (Tr. 4425). Robert Stanton, Mr. Hilliard's attorney, drew up the limited partnership agreement at Crystal Hilliard's direction (Tr. 4429). Ms. Blevins, after reviewing the draft, accepted it without any changes (Tr. 4430) and Mr. Stanton filed the agreement with the Secretary of State of the State of Texas.

160. Ms. Blevins' total contribution to the enterprise, as of the date of her testimony, was $2,500. Ms. Hilliard's initial contribution was $15,000 and she has made additional contributions since that time (Tr. 4434). Although Ms. Blevins is charged with the responsibility of keeping the partnership's books, she was unable to say whether or not Ms. Hilliard's contributions to the venture, beyond her initial capital contributions, are loans or advances to the partnership (Tr. 4465), and she indicated that she does not keep a capital account for the partners in the partnership's books (Tr. 4465). Ms. Blevins is the sole signatory on the partnership's bank account (Tr. 4435).

161. Ms. Blevins has not as yet decided if her husband will work at the proposed station (Tr. 4447). However, the record indicates that Mr. Blevins will leave his employment as chief engineer and acting general manager at station KTNS, Plano, Texas if Native American is the successful applicant (Tr. 4447, 4457), and he has not informed his wife of any other employment plans if he should leave station KTNS, Plano, Texas.

162. Ms. Blevins' claim to minority status is based on 1/32 degree Native American blood. Although Ms. Blevins has not been actively involved in matters of particular concern to Native Americans (Tr. 4454) and was unsure of the size of the tribe of which she is a member and did not know the name of its chief (Tr. 4437), she has been on the tribal role of the tribe since 1960 (Tr. 4476, 4484) and has the right to vote on tribal affairs (Tr. 4479). Ms. Blevins exercised this right in 1984 or 1985 and again in 1986 (Tr. 4483-84). In addition, she has received funds as a member of the tribe and owns land designated as Indian land jointly with her sister (Tr. 4477).

163. Ms. Blevins' past activities on behalf of the Girl Scouts the school band, the basketball team, and the Parent Teachers Association were in conjunction with her childrens' participation in these activities while they were students at Dooley Elementary School (Tr. 4439-40).

164. Ms. Blevins worked approximately 10 hours a week from May 1985 to July 1986 as a special assistant to her husband, the general manager of station KTSN, Plano, Texas (Tr. 4457). Prior to that time, she had never worked at a broadcast station and she testified that the only reason she worked at the station was to obtain credit in this comparative proceeding for broadcast experience (Tr. 4458).

165. Isaac Blevins, Ms. Blevins' husband, first became aware of the opportunity to apply for Channel 68 from Charles Crossno (Tr. 4427), a friend as well as a former business associate (Tr. 4462). Mr. Blevins asked his wife if she was interested in applying for the station (Tr. 4428), and he attended the only meeting in connection with preparing the application (Tr. 4442). Communications counsel, Mr. Crossno, and Ms. Blevins were also in attendance at that meeting (Tr. 4442). As noted above, Mr. Blevins took an active role in prosecuting Native American's application. As an experience broadcaster, the inclination to rely on his expertise especially in view of Ms. Blevins' own limited broadcast experience, was, no doubt, strong. This same tendency to rely on her husband would, the Presiding Judge concludes, be even greater in the event that Native American becomes the licensee for the facility in Arlington Texas. The fact that Mr. Blevins will resign from his present employment coupled with the fact that Ms. Blevins has not ruled out hiring her husband to work at the station, makes it very likely that Ms. Blevins will again assume a subordinate role to her husband, relying on him to manage the facility. The Presiding Judge concludes, therefore, that Ms. Blevins has failed to demonstrate that she will act independently of her husband in performing her duties at the station. The Presiding Judge concludes that Ms. Blevins' pattern in the past of relinguishing decision making to her husband, who has significant past broadcast experience, is not likely to change in the event that Native American becomes the licensee, and that it is highly unlikely that she will participate to any significant degree in the management of the broadcast facility. Native American is not therefore entitled to any integration credit based on Ms. Blevins' pledge to work at the proposed station.

166. Although it is not necessary, in view of the above finding, the Presiding Judge concludes that if Ms. Blevins' integration credit was credible, she would be entitled to a minority credit for her Native American status since she is on the tribal role of her tribe. Any credit awarded Ms. Blevins would be further enhanced by her gender and her residence within the service contour of Native American's proposed station. Her civic activities are few and her broadcast experience is of a very limited nature and they would enhance to virtually a negligible degree any integration credit awarded Ms. Blevins.

167. Neither Native American, Sandra Blevins, or Crystal Hilliard have any chargeable interest or associations with any medium of mass communications.

COMPARATIVE COVERAGE

168. The parties submitted a joint engineering exhibit in response to the comparative coverage issue designated in the *Hearing Designation Order*. The exhibit was prepared by William C. King, Jr. of the firm Jules Cohen & Associates, P.C. and entered into the evidence of record as the "Joint Engineering Exhibit" and "Supplement to the Joint Engineering Exhibit." The applicants were ranked as follows:

	Population (1980 Census)	Area (sq. mi.)
Native American	3,102,650	12,476
Johnson	3,052,499	10,745
Briscoe	3,026,750	9,787
Arlington	68 3,014,633	9,059
Metroplex	3,000,177	9,217
Charisma	2,983,841	8,692
Southwest	2,980,191	8,699
LouRay	2,975,894	8,297
United	2,963,464	7,852
North Texas	2,942,560	9,844
Thornton	2,868,713	6,709

As noted by the Bureau, a maximum of only 8.15 percent difference exists between the populations to be served by all of the applicants and only a 1.64 percent difference between the first and second. In view of the significant number of persons to be served and the relatively minor percentage difference between the first and last applicant in coverage figures, no preference will be awarded on the basis of coverage alone. *See, **Mark L. Wodlinger***, 58 RR 2d 1006 (Rev. Bd. 1985).

169. The Joint Exhibit further demonstrates the following:

Applicants Proposing New Service to Uncommon Regions Having Less Than Five Existing or Authorized Services

Applicant	Population (1980 Census)	Area (sq. mi.)
North Texas		
1st service	11,368	100
2nd service	564	77
3rd service	1,296	115
4th service	1,689	229
5th service	4,557	351
Native American		
5th service	4,254	217
Johnson		
5th service	3,425	135
Briscoe		
5th service	2,414	52

(Joint Engineering Exhibit, Table 11, Figure 5, p. 13.)

170. Official notice is taken of a construction permit issued to Interspan Communications, A Limited Partnership (Interspan), dated December 4, 1987, FCC File No. BPTL-851008KN, which proposes to operate from the same site as that specified by North Texas (Tr. 4573-75). North Texas' technical proposal, as amended, is identical to Interspan's (Supplemental Joint Engineering Exhibit, p. 8, Fig. 2A). Accordingly North Texas no longer proposes a first service to 11,615 persons but rather a second service, and a third service to 305 persons, a fourth service to 1,578 persons, and a fifth service to 1,335 persons. Johnson and Native American proposes a fifth service to 200 and 678 persons respectively. Although the percentages of persons who will receive their second to fourth services are relatively small when compared to the total number of persons served, North Texas is entitled to a moderate preference for its coverage proposal over the other applicants for providing a second, third and fourth service. *See, **Christian Broadcasting of the Midlands, Inc.***, 57 RR 2d 87, 91 (Rev. Bd. 1984).

ULTIMATE CONCLUSIONS

171. As noted above, Briscoe has been disqualified. Arlington Southwest, Johnson and Native American have been found not to propose any meaningful integration of ownership into management. United is entitled to a mere 25 percent quantitative integration credit and LouRay only 40 percent. Metroplex, although it proposes 100 percent integration of ownership into management and its integration credit is qualitatively enhanced by 100 percent minority ownership, gender preference, past broadcast experience, local residence with significant civic involvement for Ms. Flores and by Ms. Leal's intention to move to Arlington if Metroplex is the permittee, its 100 percent integration credit is less than full time. Of the applicants, only Charisma, North Texas and Thornton have been found to be entitled to a 100 percent quantitative integration credit and none of these applications warrants a diversification demerit of any degree. North Texas, however, of the three applicants, is also entitled to a moderate preference over its competitors for coverage to underserved areas, and its integration credit is qualitatively enhanced to a greater degree than those of Charisma and Thornton since it also has 100 percent minority ownership coupled with local residence with involvement in civic affairs. Accordingly, the Presiding Judge finds that North Texas' proposal is superior to that of Charisma and Thornton and that a grant of North Texas' application would best serve the public interest.

RULINGS

172. IT IS ORDERED that the Motion for Leave to File Supplement to Proposed Findings of Fact and Conclusions of Law, Phase One, filed by Channel 68, North Texas Television Limited Partnership on December 8, 1987 IS GRANTED, and "Channel 68, North Texas Television Limited Partnership's Supplement to Proposed Findings of Fact and Conclusions of Law, Phase One," filed on December 8, 1987 IS RECEIVED; that the Request for Leave to File Erratum to Initial Proposed Findings of Fact of United Broadcast Group, Ltd., filed by United Broadcast Group, Ltd. on January 21, 1988 IS GRANTED, and the "Erratum to the Initial Proposed Findings of Fact of United Broadcast Group, Ltd.," filed on January 21, 1988 IS RECEIVED; that the Motion to Reopen Record and Admit Additional Evidence filed by United Broadcast Group, Ltd. on February 3, 1988 IS GRANTED, and the record in this proceeding IS REOPENED for the sole purpose of RECEIVING INTO EVIDENCE United Exhibit 11, and that the record IS CLOSED; that the Motion to Strike filed by Native American Broadcasting Company on March 2, 1988 IS GRANTED, and the objected to material IS STRICKEN; and that the Motion to Reopen the Record filed by Channel 68, North Texas Television Limited Partnership on May 24, 1988 IS DENIED.

173. AND IT IS FURTHER ORDERED that unless an appeal from this Initial Decision is taken by a party, or the Commission reviews this Initial Decision on its own motion in accordance with the provisions of Section 1.276

of the Commission's Rules, 47 C.F.R. 1.276, the application of Channel 68, North Texas Television Limited Partnership (File No. BPCT-850422KI) for authority to construct a new commercial television station to operate on Channel 68, Arlington, Texas IS GRANTED; that the applications of Charisma Broadcasting Corporation (File No. BPCT-850207KG), Arlington 68 TV, Inc. (File No. BPCT-850418KZ), United Broadcast Group, Ltd. (File No. BPCT-850419KE), Southwest Communications Ltd. (File No. BPCT-850419KO), Johnson Television, Ltd. (File No. BPCT-850422KG), Briscoe Broadcasting, Ltd. (File No. BPCT-850422KH), The LouRay Corporation (File No. BPCT-850422KM), Metroplex Communications, Inc. (File No. BPCT-850422KP), Sammy A. Thornton (File No. BPCT-850422KR), and Native American Broadcasting Company, A Limited Partnership (File No. BPCT-850422KU) ARE DENIED.[4]

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Gonzalez
Administrative Law Judge

FOOTNOTES

[1] The applications of Arlington Communications, Inc., Criswell Center for Biblical Studies, MPC-TV Limited Partnership, HRH Communications Inc., and Arlington Minority Broadcasters were dismissed by the following *Order (s)* released on the dates indicated: FCC 86M-2544 released August 13, 1986, FCC 86M-2545 released August 13, 1986, FCC 87M-119 released January 16, 1987, and FCC 87M-721 released April 1, 1987, respectively.

[2] Charisma was formed to apply for Channel 55 at Lake Dallas, Texas (Tr. 314).

[3] WRFM was unbuilt at the time of the hearing. WRFM's call sign changed to WXDJ which began operations on program test authority on July 17, 1987 (BLH-870717KB). Smithwick sold his interest in WXDJ on July 18, 1987 (reported in Ownership Report filed with the application for assignment of construction permit (File No. BAPH-870724HE)).

[4] In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Section 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-294

In the Matter of

Amendment of Section 73.202(b), RM-5733
Table of Allotments,
FM Broadcast Stations.
(Jefferson City and
Vandalia, Missouri)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 3, 1989; Released: May 15, 1989

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 2 FCC Rcd 4741 (1987), proposing the substitution of FM Channel 261C2 for Channel 261A at Jefferson City, Missouri, and modification of its license for Station KJMO-FM (Channel 261A) to specify Channel 261C2. The *Notice* was issued in response to a petition filed by Triple D. Properties (petitioner). Petitioner filed comments in which it reaffirmed its interest in the channel. KFAL, Inc., Columbia FM, Inc., (with an amended service list), and Contemporary Broadcasting, Inc. also filed comments. Petitioner filed reply comments. The following comments were filed late. Informal Comments from William T. Simpson, KLRK receiver; Supplemental comments by Contemporary Broadcasting, Inc.; Request for leave to file and response to supplemental comments and supplemental comments by Triple D. Properties, Inc.; Withdrawal of Comments by Contemporary Broadcasting, Inc.; Withdrawal of Comments by KFAL, Inc., and Further supplemental comments by Triple D. Properties.

2. The proposed upgrade at Jefferson City requires a channel substitution at Vandalia, Missouri. The *Notice* proposed the substitution of FM Channel 282A for Channel 261A. Channel 282A can be allotted to Vandalia at the current site of Station KLRK in compliance with the Commission's spacing requirements. It is also necessary to impose a site restriction on Channel 261C2 at Jefferson City 18.3 kilometers (11.4 miles) southwest of the community. The site restriction will prevent a conflict with Channel 260A (vacant), Warrenton, Missouri, a construction permit for Channel 261A, De Soto, Missouri (BPH 850710NC), and Channel 263A, Fulton, Missouri.[1]

3. Contemporary Broadcasting, Inc., licensee of Station KFMZ(FM), Columbia, Missouri, and KFAL, Inc., licensee of Station KKCA(FM), Fulton, Missouri, have withdrawn all of their comments filed in this proceeding. Therefore, no further analysis of their comments is necessary.

4. Petitioner has filed comments restating its interest in Channel 261C2 at Jefferson City. According to petitioner the proposed substitution at Jefferson City will provide a new FM service to approximately 3,298 square miles containing 217,723 people, which is an increase of 366 percent in area and 210 percent in population over its present operation. Petitioner further states that because the proposed channel substitution at Jefferson City requires the substitution of Channel 288A for 261A at Vandalia, Missouri, it will reimburse the licensee of KLRK(FM) for the reasonable costs incurred in changing frequencies.

5. Columbia FM filed comments indicating it had no objection to the Jefferson City and Vandalia proceeding so long as those proposals do not interfere with Columbia FM's pending proposals to allot Channel 263A to Ashland, Missouri, and Channel 290C2 to Columbia, Missouri.[2]

6. Based on the above information, we believe the public interest would be served by the substitution of FM Channel 261C2 for Channel 261A at Jefferson City, Missouri, since it could provide the community with its second wide area FM service. The substitution can be made in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction 18.3 kilometers southwest of the community.[3] As indicated in the *Notice*, to accommodate the channel substitution at Jefferson City, it is necessary to substitute Channel 282A for Channel 261A at Vandalia, Missouri. Channel 261A is licensed to Station KLRK, Vandalia. The substitution at Vandalia can be accomplished in compliance with the minimum distance separation requirements at the current site of Station KLRK.[4] The *Notice* gave Vancom, Inc. until October 5, 1987, to file a written statement regarding the proposed substitution and further indicated that if no written statement was filed by that date, it would have consented to the modification as proposed in the Order to Show Cause. Since a written statement has not been received at the Commission from the licensee, it will be deemed to have consented to the modification.[5] Therefore, we shall substitution FM Channel 282A for Channel 261A at Vandalia, Missouri.

7. We have authorized a modification of petitioner's license for Station KJMO-FM, Jefferson City, Missouri, to specify operation on Channel 261C2 in accordance with Section 1.420(g) of the Commission's Rules.

8. As discussed above, we find the substitution of Channel 261C2 for Channel 261A at Jefferson City, Missouri, to be in the public interest. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **June 29, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Jefferson City, Missouri	261C2, 295C1
Vandalia, Missouri	282A

9. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station

KJMO-FM, Jefferson City, Missouri, IS MODIFIED to specify operation on Channel 261C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

10. IT IS FURTHER ORDERED, That pursuant to Section 316 of the Communications Act of 1934, as amended, the license of Vancom, Inc. for Station KLRK at Vandalia, Missouri, IS MODIFIED, effective **June 29, 1989,** to specify operation on Channel 282A in lieu of Channel 261A subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in license BLH830627AA except the channel as specified above. Any other changes, except those so specified under Section 73.6120 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, provided the transmission facilities comply in all respects with license BLH830627AA except for the channels as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Channel 263A has been proposed as a substitution for Channel 249A, Fulton, Missouri, in MM Docket 87-493. *See* 2 FCC Rcd 6959 (1987).

[2] A *Report and Order* was released on December 12, 1987, allotting Channel 291C2 to Ashland, Missouri, and denying the allotment of Channel 263A to that community. 2 FCC Rcd 7198 (1987). A Memorandum Opinion and Order was released on November 5, 1987, denying Columbia FM's request for allotment of Channel 290C2 at Columbia, Missouri. 2 FCC Rcd 6764 (1987).

[3] The coordinates for Channel 261C2 at Jefferson City are 38-28-35 and 92-20-19.

[4] The coordinates for Channel 282A at Vandalia are 39-19-00 and 91-28-22.

[5] William T. Simpson, receiver for Station KLRK, Vandalia, Missouri, submitted a letter dated October 2, 1987, indicating his objection to the substitution of channels at Vandalia, and requesting that a hearing take place. The Appendix to the *Notice* requires an original and four copies of all comments shall be furnished to the Commission and that comments shall be served on the petitioner by the person filing the comments. Only the original of the letter has been received at the Commission and lacking a date stamp there is no way to determine the exact date of receipt and there is no indication that the petitioner was properly served. Revised Section 1.87 of the Commission's Rules no longer affords a station affected by a proposed change in the Table of Allotments an automatic right to a hearing on request. As indicated in the *Notice of Proposed Rule Making and Order to Show Cause,* the Vandalia licensee was advised that pursuant to the requirements of Section 1.87 of the Commission's Rules it was required to show with particularity why its license should not be modified as proposed. The letter submitted by W.T. Simpson makes reference to possible economic damage should the Vandalia channel be changed, but does not raise the requisite substantial and material question of fact nor provide a valid reason for denial of the Jefferson City proposal. The letter has been treated as an informal comment in the proceeding.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-108

In the Matter of

Amendment of Section 73.202(b), RM-6606
Table of Allotments,
FM Broadcast Stations.
(Sonora, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 3, 1989; Released: May 15, 1989

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed by H Group, Inc. (petitioner), licensee of Station KZSQ-FM, Channel 224A, Sonora, California, seeking the substitution of Channel 224B1 for Channel 224A and modification of its license accordingly. In order to accommodate the request in compliance with the minimum distance separation requirements, petitioner seeks an increase in the site restriction on Channel 223A at Atwater,[1] California, from 7.2 kilometers (4.5 miles) to 10.3 kilometers (6.42 miles).[2]

2. A staff engineering analysis reveals that the site requested by petitioner would place its transmitter for Channel 224B1 a distance of 23.6 kilometers east of Sonora,[3] at reference coordinates 37-58-00 and 120-06-59.[4] Moreover, the distance between petitioner's proposed site at Sonora and Channel 223A at Atwater, at the site proposed therefor, is 88.3 kilometers whereas a distance of 88 kilometers is required in this instance.

3. Since the modification request at Sonora conforms with the provisions of Section 1.420 of the Commission's Rules, we shall propose to modify the facilities of Station KZSQ-FM without entertaining other expressions of interest.

4. In view of the above, and in order to provide Sonora with a first wide area coverage FM service, we shall propose to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with regard to the community listed below, as follows:

	Channel No.	
City	Present	Proposed
Sonora, California	224A	224B1

5. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Notice* by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the following applicants for Channel 223A at Atwater, California: Gregory S. Genetti, 231 Arroyo Grande Way, Los Gatos, CA 95030, and Atwater Broadcasting Company, 1038 Neilson Street, Albany, California 94706.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **July 6, 1989,** and reply comments on or before **July 21, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Meredith S. Senter, Jr., Esq.
Stephen D. Baruch, Esq.
Leventhal, Senter & Lerman
2000 K Street, NW
Suite 600
Washington, DC 20006-1809

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Channel 223A was allotted to Atwater in MM Docket No. 84-231. Although no applications were filed during the window period, three applications were subsequently received, as follows: Gregory S. Genetti ("Genetti") (File No. 871207MA); H Group, Inc. (BPH-871208MD); and Atwater Broadcasting Company ("Atwater") (File No. 871216MK). Petitioner advises that it has entered into a settlement agreement with Genetti whereby H Group's application would be granted. According to the Commission records, Atwater has requested dismissal of its application (File No. 871216MK).

[2] Coordinates at the proposed site for Channel 223A at Atwater are 37-16-05 and 120-35-38.

[3] Although use of the petitioner's preferred site is located farther from Sonora than the maximum distance the Commission normally assumes for the provision of city grade coverage (3.16 mV/m), petitioner submitted engineering data demonstrating that its proposal could comply with Section 73.315(a) of the Rules. Specifically, it has demonstrated that the most distant point in Sonora from its proposed transmitter site is 24.9 kilometers on a bearing of 275.5 degrees. Petitioner adds that the 3.16 mV/m contour of its proposed facilities (0.45 kW ERP at 631.5 meters HAAT), computed in accordance with the Commission's standard prediction methods (Sections 73.313(d)(1)-(3) and 73.311(a),(b)(3), will extend 26.1 kilometers on that bearing. Therefore, the 3.16 mV/m contour should encompass the entire community. *See Woodstock and Broadway, VA,* 3 FCC Rcd 6398 (1988).

[4] Use of petitioner's preferred site also meets the minimum distance spacing requirements to the licensed site for Station KAER(FM), Channel 223B, Sacramento, California, at reference coordinates 38-42-26 and 121-28-33.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-109

In the Matter of

Amendment of Section 73.606(b), RM-6642
Table of Allotments,
TV Broadcast Stations.
(Sun Valley, Idaho)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 3, 1989; **Released: May 15, 1989**

By the Chief, Allocations Branch:

1. Before the Commission for consideration is petition for rule making filed by Sun Valley Television (petitioner), proposing the allotment of VHF Television Channel 5, to Sun Valley, Idaho as a first local commercial service. Petitioner states its intention to apply for Channel 5, if allotted.

2. Sun Valley in Blaine County is located in Central Idaho approximately 150 kilometers (95 miles) east of Boise, Idaho.

3. A staff engineering analysis has determined that Channel 5 can be allotted to Sun Valley in compliance with Section 73.610 of the Commission's Rules.[1] It should be noted that although the Commission has imposed a freeze on television allotments in certain areas, Sun Valley is not affected since it is located far from all areas where the freeze is specified.

4. In view of the above, we believe the public interest would be served by proposing the allotment of VHF television Channel 5 to Sun Valley, Idaho. The proposal could provide Sun Valley with its first commercial television service. Accordingly, we shall seek comments on the proposal to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, as follows:

	Channel No.	
City	Present	Proposed
Sun Valley, Idaho	–	5-

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before **July 6, 1989,** and reply comments on or before **July 21, 1989** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

John P. Bankson, Jr.
Hopkins, Sutter, Hamel & Park
888 16th Street, N.W.
Washington, D. C. 20006
(Attorney)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Allotments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this proposed allotment are 43-41-48 and 114-21-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-356

In the Matter of

Amendment of Section 73.202(b), RM-6324
Table of Allotments,
FM Broadcast Stations.
(Dahlonega, Georgia and
Murphy, North Carolina)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 3, 1989; Released: May 15, 1989

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 3 FCC Rcd 4693 (1988), issued in response to a petition filed by Andrews Broadcasting Company (petitioner), proposing the allotment of Channel 282A to Dahlonega, Georgia. In addition, the *Notice* proposed the substitution of Channel 274A for Channel 282A at Murphy, North Carolina, to accommodate the allotment of Channel 282A at Dahlonega, Georgia. Petitioner filed supporting comments. Cherokee Broadcasting Co., Inc., applicant for Channel 282A, also filed supporting comments.

2. We believe the public interest would be served by the allotment of Channel 282A at Dahlonega, Georgia, since it could provide the community with its first local FM service. The allotment can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules, with a site restriction of 8 kilometers (5 miles) northwest of the city to avoid short-spacing to Station WBBQ(FM), Channel 282C, Augusta, Georgia.[1] As indicated in the *Notice*, in order to allot Channel 282A at Dahlonega, it is necessary to substitute Channel 274A for Channel 282A at Murphy. Channel 274A was allotted to Murphy, North Carolina, in MM Docket 84-231 and made available for application in Window No. 48. A construction permit for this channel has been issued to Cherokee Broadcasting Co. Inc. (BPH-880226MJ). Cherokee filed supporting comments stating that the substitution of Channel 274A for Channel 282A will make it possible to co-locate its AM and FM sites and thereby achieve operating economies which would not be possible otherwise. Channel 274A can be used at the construction permit site for Channel 282A, in compliance with the minimum distance separation requirements of the Commission's Rules.[2]

3. Channel 282A can be allotted to Dahlonega, Georgia, in compliance with the Commission's minimum distance separation requirement with a site restriction. As proposed we shall modify the construction permit (BPH-880226MJ) at Murphy, North Carolina, to specify operation on Channel 274A. We will permit Cherokee Broadcasting Co. to amend its construction permit for Channel 282A at Murphy to specify Channel 274A without loss of "cut-off" status since no upgrade in class of channel will result. *See Salamanca, New York and Bradford, Pennsylvania*, 50 FR 26208, June 25, 1985, and *Sanibel, Florida*, 50 FR 32706, August 14, 1985.

4. The *Notice* erroneously indicated that the ultimate permittee for Channel 282A at Dahlonega, Georgia, would reimburse the permittee for costs incurred in changing its frequency to Channel 274A. The construction permit was granted contingent on the outcome of this proceeding. Therefore, no reimbursement is required.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **June 29, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Dahlonega, Georgia	282A
Murphy, North Carolina	274A

6. The window period for filing applications will open on **June 30, 1989,** and close on **July 31, 1989.**

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the permittee of Cherokee Broadcasting Co. Inc., for Station WCNG(FM), Murphy, North Carolina, IS MODIFIED to specify operation on Channel 274A in lieu of Channel 282A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in station WCNG's Construction Permit BPH-880226MJ, except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with Construction Permit BPH-880226MJ, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

8. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the permittee of Station WCNG, as follows: Cherokee Broadcasting Co., Inc., P.O. Box 280, Murphy, North Carolina 28906.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The site restricted coordinates for Channel 282A at Dahlonega are 34-35-06 and 84-02-37.

[2] The coordinates for Channel 274A at Murphy's present site are 35-07-12 and 84-02-06.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-110

In the Matter of

Amendment of Section 73.202(b), RM-6639
Table of Allotments,
FM Broadcast Stations.
(Harlem, Georgia)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 3, 1989; Released: May 15, 1989

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by TM Broadcasting (petitioner), requesting the allotment of Channel 236A to Harlem, Georgia, as the community's first local broadcast service. Petitioner states its intention to apply for the channel, if allotted.

2. A staff engineering analysis has determined that Channel 236A can be allotted to Harlem, Georgia in compliance with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules.[1]

3. In view of the fact that Harlem, Georgia, could receive its first local FM channel the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Harlem, Georgia	--	236A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **July 6, 1989,** and reply comments on or before **July 21, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

John M. Spencer
Leibowitz and Spencer
3050 Biscayne Blvd., Suite 501
Miami, Florida 33137
(Counsel)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates are North Latitude 33-24-54 and West Longitude 82-18-42.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-436

In the Matter of

Amendment of Section 73.202(b), RM-6359
Table of Allotments,
FM Broadcast Stations.
(Valdosta, Georgia)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 3, 1989; Released: May 15, 1989

By the Chief, Allocations Branch:

1. At the request of Multi-Media Broadcasting, Inc. (petitioner), licensee of Station WZLS(FM), Channel 244A at Valdosta, Georgia, the Commission has before it for consideration the *Notice of Proposed Rule Making*, 3 FCC Rcd 5576 (1988), proposing the substitution of Channel 244C2 for Channel 244A at Valdosta and modification of the station's license accordingly. Petitioner filed supporting comments restating its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 244C2 for Channel 244A at Valdosta, Georgia, providing an expanded coverage area. Channel 244C2 can be allotted to Valdosta in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.6 kilometers (7.8 miles) northwest to avoid a short-spacing to Station WAIV(FM), Channel 245C, Jacksonville, Florida.[1]

3. As requested, we are modifying the license of Station WZLS(FM) to specify operation on Channel 244C2 in lieu of Channel 244A in accordance with Section 1.420(g) of the Commission's Rules.

4. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **June 29, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Valdosta, Georgia	225C1, 239C1, 244C2, 266C1, 299A

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Multi-Media Broadcasting, Inc., for Station WZLS(FM), Valdosta, Georgia, IS MODIFIED, to specify operation on Channel 244C2 in lieu of Channel 244A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 30-53-12 and West Longitude 83-23-36.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-416

In the Matter of

Amendment of Section 73.202(b), RM-6426
Table of Allotments,
FM Broadcast Stations.
(Pearson, Georgia)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 3, 1989; Released: May 15, 1989

By the Chief, Allocations Branch:

1. At the request of Albert E. Harper d/b/a Harper Broadcasting (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 3 FCC Rcd 5255 (1988), proposing the allotment of Channel 270A to Pearson, Georgia, as that community's first local FM service. Petitioner filed comments reiterating his intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by allotting Channel 270A to Pearson, Georgia, since it could provide the community with its first local service. Channel 270A can be allotted to Pearson in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.5 kilometers (1.6 miles) west to avoid a short-spacing to Station WZAT(FM), Channel 271C, Savannah, Georgia.[1]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **June 29, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Pearson, Georgia	270A

4. The window period for filing applications will open on **June 30, 1989,** and close on **July 31, 1989.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Pearson, Georgia, are North Latitude 31-17-38 and West Longitude 82-52-51.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-56

In the matter of

Designation of a Standard Algorithm for Propagation Prediction in the FM and TV Broadcast Services.

REPORT AND ORDER
(Proceeding terminated)

Adopted: February 22, 1989; Released: May 16, 1989

By the Commission:

INTRODUCTION

1. The Commission has before it a *Notice of Proposed Rule Making ("Notice")*[1] in which it proposed to establish an algorithm used by the staff as the official standard for predicting field strengths for TV and FM stations in order to facilitate the resolution of disputes that may occur when visual readings or other algorithms are used to determine field strength values. Based upon the record, we have concluded that further consideration of this proposal does not appear fruitful at this time.

BACKGROUND

2. To facilitate the allotment and assignment of the radio stations under its jurisdiction, the Commission has, over the years, conducted propagation studies and published the resulting data in various reports. Generally, the data has been presented as families of curves drawn on graph paper. These curves are used to determine a station's signal strength as a function of transmitting power, antenna height, and distance from the transmitter site. Thus, the graphic curves have had the advantage of compactness, versatility, and the ability to readily depict relationships among the various factors that affect signal propagation. However, visually reading values from the curves is a laborious task that suffers from a relative lack of precision and speed compared to modern computerized methods. Experience has shown that two persons may read different values from the curves for the same set of circumstances, and that even the same person might obtain different values in subsequent readings.

3. In an effort to ensure more consistent results, the Commission, in 1976, developed a computer program that calculates predicted signal strength levels based on a table of propagation data points.[2] Programs using the Commission's propagation algorithm have now been in regular use for more than ten years and have demonstrated numerous advantages over visual methods. These include much faster computation speed, repeatability of calculations, interactive propagation analysis (real time solution of any one propagation variable when the others are known) and the ability to order easily the presentation of data into various desired formats. To provide a substantial savings in human resources over manual methods, we proposed to evaluate TV and FM engineering applications using such computer programs.

SUMMARY OF THE COMMENTS

4. Commenters who filed in response to the *Notice* generally agree that computer techniques are preferable to visually reading the graphic curves but nevertheless express reservations regarding adoption of the Commission's algorithm as proposed in the *Notice*.[3] We briefly describe those concerns below upon which our decision is based.[4]

5. *Algorithm complexity*. Although the algorithm used by the Commission is complex, its original selection in 1976 was based upon its ability to operate with far fewer basic reference data points than other algorithms and to maintain reasonable agreement with the graphic curves.[5] Several commenters contend that its complexity, while not significant when implemented on large mainframe computers, is burdensome and generally impractical in the case of personal computers. In addition, they maintain that this complexity precludes the use of hand calculators.

6. *Program portability*. Many commenters argue that, under the Commission's proposal, the program code utilized by the Commission would require a major conversion effort before it can be compiled and run on typical small personal computers. They also contend that hardware and software variations among computers could produce different results in the case of seemingly equivalent programs.

7. *Reference data points*. Lahm, in his comments, expresses concerns about the quantity, spacing, and selection of the reference data points used by the Commission's program. For example, he points out that while the antenna height scale is logarithmic, the separations between the limited number of data points are mostly linear and are not always close to the critical antenna heights that establish coverage limits for various classes of stations. He argues that, as a consequence, different results would be obtained, depending upon the method of interpolation. As a remedy to this problem, he recommends that additional reference points be provided from the original measurement data.

8. *Selection of algorithm*. Many commenters expressing concerns regarding the proposed algorithm urge the Commission to adopt a much less complex algorithm with more reference data points. This, they believe, could reduce difficulties implementing the algorithm on small personal computers and should also permit results to be obtained using a hand calculator.

DISCUSSION

9. We have carefully reviewed the comments and reply comments filed in response to the *Notice*. They have served to heighten our awareness of the difficulties associated with implementing our propagation algorithm on personal computers. Clearly, many commenters would prefer adoption of a new and less complex algorithm based upon a greater number of reference propagation data points. However, consideration of an alternate computer algorithm is beyond the scope of our *Notice*, would

require further Rule Making, and would probably involve the expenditure of considerable time and resources on the part of both the Commission and the public.

10. In view of the substantial effort required to select another algorithm and the lack of resources available to embark on such a project, continuation of the instant proceeding does not appear fruitful at this time. We are therefore terminating this proceeding without action. As resources become available, the staff shall research this matter and should future circumstances warrant, we could revisit this issue with the benefit of the views and information compiled in the record of this proceeding.

11. Because the action taken herein will make no change in the way applications for broadcast stations must be completed or in the way such applications will be processed by the Commission's staff, we have determined that no final regulatory flexibility analysis is necessary, and that there would be no impact in terms of the requirements of the Paperwork Reduction Act.

ORDERING CLAUSE

12. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, this proceeding IS TERMINATED.

13. Further information on this matter may be obtained from Hank VanDeursen, Mass Media Bureau, Engineering Policy Branch, (202) 632-9660.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] *See Notice of Proposed Rule Making*, MM Docket No. 88-56, 3 FCC Rcd 843 (1988).

[2] *See FCC/OCE Report No. RS-76-01, Field Strength Calculations for TV and FM Broadcasting (Computer program TVFMFS)*, Kalagian, 1976.

[3] Comments were submitted by: Association of Federal Communications Consulting Engineers (AFCCE); Ronald F Balonis; R. Morgan Burrow, Jr; CBS, Inc.; Cohen and Dippell; Communications General, Corp.; Comp Comm, Inc.; EDX Engineering, Inc; KTXN-FM; Karl D. Lahm (Lahm); Lohnes and Culver; Doug C. McDonell; Pepper and Corazzini; John J. Tibilette; and U.S. Department of Commerce. Reply comments were submitted by: AFCCE; Cohen and Dippell; Comp Comm, Inc.; Crawford Broadcasting Company; Gallagher and Associates; Lahm; R. Morgan Burrow, Jr; and J. S. Sellmeyer.

[4] Although other concerns were also expressed, they would apply only if we proceeded toward adoption of some algorithm. Since that is not our intention at this time, those comments will not be discussed herein.

[5] The reduced quantity of reference data points was a major factor when the program was developed because of the resources needed to accomplish that task.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

TWENTIETH HOLDINGS CORPORATION
(Transferor)

and BTCCT-880617KE

EDWARD W. BROOKE AND
HUGH L. CAREY, TRUSTEES
(Transferees)

For Transfer of Control of WFXT, Inc.,
Licensee of Television Station WFXT(TV),
Boston, Massachusetts

WFXT, Inc. BRCT-881201LM

For Renewal of License of Station
WFXT(TV), Boston, Massachusetts

DECISION

Adopted: April 26, 1989; Released: May 16, 1989

By the Commission:

INTRODUCTION

1. Twentieth Holdings Corporation (Twentieth) now owns all of the stock of WFXT, Inc., licensee of television station WFXT, channel 25, Boston, Massachusetts. We now consider the application identified in the caption, by which Twentieth requests our consent to a transfer of control of the licensee to a trust. Further, the Urban League of Eastern Massachusetts (the League) filed a petition to deny the application.[1] The League and Twentieth, however, subsequently reached a settlement agreement, and the League withdrew its petition by letter of January 9, 1989. Part of the settlement agreement requires that specified changes will be made in the trust, which Twentieth proposes to make after Commission approval of the application. To the extent required by our Rules and policies, we shall impose appropriate conditions incorporating those changes. Further, despite the formal withdrawal of the petition, we remain obligated to review the matters alleged to determine whether a grant of the application will serve the public interest. *Booth American Co.*, 58 F.C.C.2d 553, 554 (1976). We believe that some of the matters raised by the League should be addressed here.

2. Subsequent to the filing of the transfer application, Twentieth filed an application (BRCT-881201LM) for renewal of license of station WFXT. The Committee for Media Diversity and the Committee for Media Access each filed timely petitions to deny that application. Each petitioner has established standing as a party in interest. *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966). Therefore, we shall also consider here the WFXT renewal application and the petitions.[2]

BACKGROUND

3. In 1986, Twentieth sought to acquire control of station WFXT (then WXEN-TV). Twentieth and News America Publishing, Inc., publisher of the *Boston Herald*, are commonly controlled. Section 73.3555(c) of the Commission's Rules, 47 C.F.R. §73.3555(c), prohibits the creation of newspaper/broadcast combinations in the same market, such as proposed by Twentieth. Twentieth therefore accompanied its application with a request for a temporary waiver of the rule to permit a reasonable time to find a buyer for the newspaper. We found the request to be persuasive and granted an 18-month waiver and the application. *Twentieth Holdings Corp.*, 1 F.C.C. Rcd. 1201 (1986). That waiver would have expired by its terms on June 30, 1988. Prior to that date, Twentieth's parent requested an extension of the waiver, which we denied on the basis of a newly enacted statute that, among other things, prohibited Commission consideration of requests for further extensions of existing waivers of section 73.3555(c). *News America Publishing, Inc.*, 3 F.C.C. Rcd. 564 (1988). News America appealed to the United States Court of Appeals for the District of Columbia Circuit, which later ruled that provision of the statute to be unconstitutional. *News America Publishing, Inc. v. FCC*, 844 F.2d 800 (D.C. Cir. 1988). Subsequently, we granted an extension to permit our analysis of the pending transfer application. *Twentieth Holdings Corp.*, FCC 88-243, released July 18, 1988.

THE PROPOSED TRANSFER OF CONTROL

4. Twentieth states that the litigation described above resulted in the loss of time to pursue "divestiture alternatives." Moreover, it claims that uncertainty as to future ownership of the station caused "adverse consequences for the station's viewers, employee morale, and station operations." Rather than seek an extension of its existing waiver of the rule, and apparently abandoning its earlier plans to sell the *Herald*, Twentieth states that it "took all necessary steps to identify a purchaser of WFXT and negotiate a sale of the station." Nevertheless, upon "further exploration of alternatives," Twentieth has now decided that placing the station in trust "constitutes the most prudent course of action." Twentieth will retain a beneficial interest in the licensee under the terms of the proposed trust.

5. Trusts, like any other legal entity, may hold broadcast licenses. We have specifically found that trusts can be legitimately used to avoid the applicability of the multiple-ownership rules. For example, we have stated that "trusts are occasionally established specifically to effect compliance with the Commission's rules for holdings which would violate the rules if held outright." *Attribution of Ownership Interests*, 97 F.C.C.2d 997, 1023 (1984), *reconsidered in part*, 58 R.R.2d 604 (1985), *further reconsidered*, 1 F.C.C. Rcd. 802 (1986) *("Attribution")*. Under our *Attribution* criteria, the ownership interests of trustors or beneficiaries will not be attributed to them if they are sufficiently insulated so as to prevent their exercise of control or influence over the trustee. Our standards for

insulating the trustor or beneficiary from the trustee are set out explicitly in *Attribution*. 97 F.C.C.2d at 1023-24. Twentieth believes that the trust proposed here complies with the insulation standards, so that its beneficial interest in station WFXT should not be attributed to it. Twentieth argues that, accordingly, its parent company's control of the *Herald* and its beneficial interest in station WFXT assertedly will not conflict with the newspaper/broadcast prohibition set out in section 73.3555(c) of the Rules.

6. The proposed Trustees are the Honorable Edward W. Brooke, former United States Senator, and the Honorable Hugh L. Carey, former Governor of New York. They have no family relationships with the principals of Twentieth, and no past business relationships with Twentieth, its affiliates and principals, except to the extent required to establish the trust. The trust places exclusive authority to manage and operate the licensee in the hands of the Trustees, including voting all WFXT, Inc. shares. The trust is described as irrevocable, but will terminate if the WFXT shares are sold to a party not associated with Twentieth or its affiliates, if there is a "complete termination of operation" of the station, or if the *Herald* is sold. The proceeds will go to Twentieth if the shares are sold. Upon the occurrence of either the termination of operation or the sale of the newspaper, the Trustees are obligated to return the shares to Twentieth.[3] The Trustees must use their best efforts to sell the shares to a third party, but such a sale is subject to three conditions: all shares must be sold to one buyer; the price must exceed $35 million; and Twentieth must approve the financial terms and conditions of the sale. Its concurrence in those terms and conditions may not be unreasonably withheld. While the trust is in effect, WFXT revenues in excess of prudent expenses will be considered income and may be remitted periodically to Twentieth. Additionally, Twentieth has stated its willingness to permit the Trustees, in their sole discretion, to reinvest income in station operations.[4] Twentieth has also arranged for a $12 million line of credit, which will be available exclusively to the Trustees for the operation of the station. Twentieth and its affiliates will have "no recourse to these funds, no say in how or when they are used and no power to revoke the facility as long as the trust is in existence."

DISCUSSION -- TRANSFER APPLICATION

7. The only issue that needs discussion is whether the proposed trust establishes sufficient insulation between Twentieth and the Trustees, under the standards set out in *Attribution*. The League contended that the proposed transaction does not establish the required degree of insulation. It noted that, in order to provide insulation, Commission policy requires the trust to "clearly state that there will be no communications with the trustee regarding the management and operation" of the station. 97 F.C.C.2d at 1024. Although the trust in this case generally meets this requirement, the League pointed to an exception that permits Twentieth and its affiliates[5] to "engage in communications with the Trustees in the course of such normal commercial relationships at arms length as the Trustees may wish in their discretion to initiate or continue," essentially with reference to program acquisition.[6] The League further observed that any person who holds the power to revoke a trust will have an attributable interest in the trust assets, unless revocation is contingent upon an event beyond that person's control. *Id.* The League contended that the trust is revocable, because it compels reassignment of the license to Twentieth if the *Herald* is sold, an event clearly within Twentieth's control.

8. In opposition, Twentieth contends that the trust meets all the Commission's insulation standards. Twentieth states that the purpose of the provision in the trust permitting certain communications is "to permit the Trustees, if they so elect, to deal with [Twentieth's affiliates] on the same basis as any other program supplier," but does not permit Twentieth "to communicate with the Trustees with regard to programming policies of Station WFXT."[7] Twentieth states that it has elected to place the license in trust, that the trust meets all Commission requirements, and that the League's dissatisfaction was with the Commission's insulation standards, not its proposal. Twentieth concludes that the Commission should not change those requirements in this adjudicatory proceeding.

9. We have carefully reviewed the contentions of the parties in light of *Attribution*. We disagree with the League on one point. We stated in *Attribution* that:

> [A] grantor or beneficiary (or any other third party) who holds the unrestricted power to replace a trustee or to revoke a trust will . . . have the assets of that trust attributed to him, unless such power is contingent upon some other event beyond that person's control. Such an arrangement clearly permits the holder of the replacement or revocation initiative to substitute his judgment for that of the trustee on issues involving the subject licensee.

97 F.C.C.2d at 1024. The Commission cited *Farmville Broadcasting Co.*, 47 F.C.C.2d 463 (1974) as support for this position. Twentieth's trust is revocable because it will terminate (if the station is not already sold to a third party) upon the sale of the *Herald*.

10. While we agree with the League that the sale of the newspaper is an event within the control of Twentieth's parent, under the circumstances of this case, we do not find that this fact requires us to reject the trust or to delete this provision. The purpose of the "irrevocable" requirement is to assure the insulation of trustees from the trustors or beneficiaries. The *Farmville* case is instructive in understanding the scope of that requirement. In *Farmville*, the owner of a controlling interest in a station proposed to place that interest in a trust, so that he could become the President, Director and General Manager of the licensee of another station, where the one-millivolt-per-meter contours of the two stations overlapped. The Commission approved the application, where the trust provided that it would terminate upon the resignation of the trustor from his positions at the second station, which would resolve the multiple-ownership problem. The trust was also subject to termination upon notice by the trustor. The Commission determined that the termination-upon-notice provision could not stand, because the "trust could be terminated at will because of any dissatisfaction" with the trustee's operation, "rather than for breach of fiduciary duty." *Id.* at 466.

11. Like Twentieth's case, resignation of the trustor in *Farmville* from his positions at the second station was within his control, yet the Commission did not require

him to reform the trust on that ground. Also like Twentieth's case, the resignation in *Farmville* would eliminate the multiple-ownership problem and, therefore, the need for the trust. That case suggests, therefore, that where occurrence of a contingency that triggers revocation of a trust also removes the conflict with the multiple-ownership rule, the contingency is permissible. In this case, the trust is revocable if the *Herald* is sold. In that event, however, the conflict with the multiple-ownership rule disappears, and the need for a trust arrangement dissolves. Moreover, in *Farmville*, the trustee would have served at the trustor's whim. The concern in that context is that a trustee may be more receptive to suggestions or complaints, direct or indirect, when the trustor's displeasure with respect to any matter, including day-to-day operations, could result in removal of the trustee. In contrast, in this case, Twentieth's displeasure with the Trustees on any ground cannot result in terminating the trust. Twentieth's affiliate would be required first to find a buyer and close the sale of the newspaper before termination of the trust. The imposition of such a substantial intervening event diminishes the likelihood of undue influence on the operation and management of station WFXT, in our judgment. It does not enable Twentieth "to substitute [its] judgment for that of the trustee on issues involving the subject licensee." *Attribution*, 97 F.C.C.2d at 1024. The ability of Twentieth to revoke the trust in these limited circumstances, therefore, does not render the trust assets attributable to Twentieth on this ground.

12. We do agree in substantial measure with the League's contentions on two points. First, the trust reserves to Twentieth the right to approve the financial terms and conditions negotiated by the Trustees with a buyer of the trust assets. We have recently considered and rejected a similar proposal in *Lorimar Telepictures Corp.*, 3 F.C.C. Rcd. 6250, 6252 (1988). There, we specifically conditioned our grant of the application on the deletion of that provision. *Id.* at 6255. For the reasons set out in that decision, *id.* at 6252, we shall condition our grant in this case in the same manner.

13. The second shortcoming noted by the League concerns communications regarding programming that the trust permits between the Trustees and Twentieth's affiliates. Such communications are essential, in Twentieth's opinion, if the Trustees are to have access to programs supplied by the Fox television network,[8] Twentieth Century Fox and Fox Television Stations, Inc., which now provide a significant portion of station WFXT's broadcast week.[9] Even though the Trustees are not obligated to continue using that programming at all or in similar amounts, they would have substantial incentives to continue the affiliation with the Fox television network and to have access to the wide range of syndicated programming available from Twentieth's other affiliates.[10]

14. We understand Twentieth's desire to enable the Trustees to communicate with Fox and its affiliates concerning programming. That desire, however, must be viewed in light of existing policy. If insulation is sought, *Attribution* requires "no communications with the trustee regarding the management and operation of the subject facilities." 97 F.C.C.2d at 1024. That restriction, adopted after a thorough review in a Rule Making proceeding, is designed to structure the trustor/trustee relationship so as to minimize the degree of potential influence that might otherwise be exercised by a trustor. We have stated that "we must rely heavily on the structure of the relationship [between a trustee and trustor] to assure appropriate insulation [in connection with trustees used in hostile tender offers]. We have recognized similar concerns in connection with the administration of our rules concerning the ownership of media." *Macfadden Acquisition Corp.*, 104 F.C.C.2d 545, 564 (1986). The structure proposed by Twentieth permits communications relating to programming.

15. In order to come into compliance with the multiple-ownership rule, Twentieth had several choices. It could sell the station or the newspaper outright. It could also elect to transfer control of the license to a trust, but only if the trust meets our insulation standards. Twentieth has elected to place the license in a trust, but that trust is not consistent with our standards. We do not believe that there is a public interest basis for providing an exception in this case. Programming is at the heart of station operations, and permitting communications as to programming would be a substantial breach in the concept of insulation. In addition, an exception in this proceeding has significant ramifications in other cases. For example, a major television network could buy television stations without limit, place them in trust, and continue to communicate with the trustee as to the programming of the station, based on the precedent Twentieth invites us to establish in this case. We decline that invitation.[11]

16. There is one limited exception that we have previously permitted to the blanket prohibition on communications. *Lorimar Telepictures Corp.*, 3 F.C.C. Rcd. 6250 (1988), involved a corporation that engaged in part in television program production and distribution. It sought to place control of its licensee subsidiary in an insulating trust. In *Lorimar*, we permitted existing contracts for syndicated programming to continue until they terminated. *Id.* at 6254. We stated that written, ministerial communications relating to those existing contracts, such as bills, payments or instructions as to the shipment of films or videotapes, would be permissible. *Id.* at 6256 n. 15. We shall permit the same communications in this case concerning contracts executed as of the date of adoption of this decision, with one exception. In *Lorimar*, we stated that syndicated programming contracts that permit renewal on the same terms solely upon notification could be renewed. While the trust in *Lorimar* was intended to last for a short period, the trust in Twentieth's case might continue indefinitely. Accordingly, in order to limit the on-going involvement of Twentieth's affiliates in station WFXT's operations, we conclude that no renewals of contracts for syndicated programming should be permitted.

17. We do not find a similar basis for creating an exception for network programming. The relationship between an affiliate and a network is substantial and ongoing. We cannot conclude, therefore, that all that need to occur to continue the existing network contract are ministerial communications. A network affiliation goes to the essence of a station's operations. Thus, the limited exception we have permitted as to syndicated programming does not apply to station WFXT's network agreement. We recognize that, as a practical matter, this will require that the network relationship be terminated before control of the station is transferred to the Trustees.

18. Twentieth cannot claim surprise as to the limits on communications. The Commission established the no-communications standard in 1984, well before Twentieth sought to acquire station WFXT in 1986. The standard is clear and unambiguous, and is set forth explicitly in

Attribution. There is no subsequent decision suggesting that on-going communications between a trustee and a trustor would be consistent with the concept of insulation. In fact, the contrary is the case. In *Owosso Broadcasting Co.*, 60 R.R.2d 99, 103 n. 16 (1986), we found the necessary degree of insulation to be absent because the trust in that case, "while restricting certain communications between the trustee and [trustor], does not contain the broader prohibition [on communications] required by the attribution standard." We issued the *Owosso* decision more than five months before Twentieth filed its application to acquire station WFXT. In light of the above, we can grant the application before us only if the trust is revised to conform to the no-communications standard. We shall impose such a condition.[12]

19. We recognize that our action will prevent the Trustees from continuing the station's Fox affiliation and acquiring new syndicated programming from Fox and its affiliates. As noted previously, however, there are several independent stations serving the Boston market that will very probably find the availability of these program sources to be attractive. Further, Boston is the sixth largest television market, and the Fox network has substantial economic incentives to find another outlet in that market. Accordingly, the action we take here does not compel the loss of Fox programming to the residents of the Boston area. Finally, we ordinarily accord transfer applicants 60 days after the effective date of our grant to consummate the transaction, and we shall do so here. If, however, the Trustees can clearly demonstrate that they require additional time in which to acquire substitute programming, the staff can grant reasonable extensions of time to close (but not more than a total of 60 days) in order to avoid disruption of program service.

THE RENEWAL APPLICATION

20. Petitioner Committee for Community Access (Community Access) asserts that because of the minimum sales price specified in the trust, the Trustees will not control the station and the proposed transfer is supposedly a sham. It concludes that the renewal application should be denied and the transfer application dismissed. Petitioner Committee for Media Diversity (Media Diversity) states that the station and the newspaper have been operating under common control well beyond the initially granted 18-month waiver period and believes that Twentieth is not entitled to an unconditional renewal for a full five-year term. Media Diversity asks the Commission to deny the renewal application, as submitted, or designate it for hearing. Alternatively, Media Diversity states that if the Commission concludes that a grant of the WFXT renewal should be made, that action should be conditioned so as to require the immediate assignment or transfer of control of the station.

21. Neither petitioner alleges anything more than the general conclusions set out above, and neither challenges the licensee's performance during the last license term. The current common control of the newspaper and the station are not in dispute, nor are there disagreements as to the terms of the trust. Community Access, however, contends that Twentieth will control the operation and management of the station because of the specified minimum sales price. Its allegation on this point appears to be a belated challenge to the transfer application. Even considering the argument here, we observe that we have approved a variety of contractual or trust terms that limit the ability of a licensee/trustee to assign or transfer its license. Those limitations, without more, have not been thought to shift the locus of control to a party other than the Commission-approved licensee.[13] Community Access has alleged no facts to support its conclusion that the Trustees will not control the station because of the minimum sales price set out in the trust. In fact, if properly insulated, the trust could continue indefinitely. Accordingly, we conclude that Community Access has failed to allege specific facts that, if true, establish that a grant of the renewal application would be *prima facie* inconsistent with the public interest.

22. The second petitioner, Media Diversity, has also failed to make a *prima facie* case, with the exception of its request for a conditional grant. It is correct in noting that an unconditional grant of the renewal application would not be consistent with the public interest as long as Twentieth is not in compliance with the multiple-ownership rule. We shall therefore make the grant of the renewal application subject to the condition that Twentieth agree in writing to the conditions set out below with regard to the transfer application and agree to proceed promptly with the transfer of control of the station from Twentieth to the Trustees.[14]

CONCLUSION

23. We believe that the terms of the trust raise matters that require the imposition of appropriate conditions. We conclude, however, that the applicants are fully qualified and that a conditional grant of the transfer and renewal applications will serve the public interest, convenience and necessity.

24. Accordingly, IT IS ORDERED, That the petition filed by the Urban League of Eastern Massachusetts, Inc., IS DISMISSED at the request of the petitioner.

25. IT IS FURTHER ORDERED, That the transfer application (BTCCT-880617KE) IS GRANTED, subject to the following conditions:

A. The financial terms and conditions of a sale to a third party to be negotiated by the Trustees shall be determined solely by the Trustees, guided by their fiduciary obligations to Twentieth. This condition does not affect terms and provisions already established by the trust instrument (sale to one party, minimum sales price) concerning such a sale.

B. Reinvestment of income from the trust assets shall be within the sole discretion of the Trustees.

C. The establishment of a $12 million credit facility shall be completed prior to placing the stock of WFXT, Inc., in trust. Twentieth can serve only to guarantee the funds lent; it cannot participate in any decision to draw on the credit facility or in any decisions as to how or when the funds will be spent; and cannot communicate with the Trustees, or the officers, directors and employees of WFXT, Inc., directly or indirectly, on any matter concerning the credit facility, except in writing as to such matters as may be required to effectuate specific terms in the credit facility concerning any guarantee.

D. The Trustees shall not hire counsel who are employed by, or under contract to, Twentieth and its affiliates.

E. Twentieth and its affiliates, and their officers, directors and employees shall not involve themselves, directly or in-directly, in the operation or management of the trust assets, or seek to influence the operation or management of the trust assets.

F. Except as is specifically permitted by the trust instrument and this Decision, there shall be no communications whatsoever, direct or indirect, oral or written, between: (a) the Trustees or the personnel of the trust assets; and (b) Twentieth, its affiliates, and their officers, directors and employees.

G. Any communications required to be in writing by the trust shall be considered station records and shall be retained by the Trustees for inspection by the Commission upon request, under the provisions of 47 C.F.R. §73.1226.

H. A copy of this decision shall be placed in the public inspection file for station WFXT and shall be retained in that file in accordance with 47 C.F.R. §73.3526, or until the trust terminates, whichever is longer.

26. IT IS FURTHER ORDERED, That the petition to deny the WFXT renewal application filed by the Committee for Community Access IS DENIED, and that the petition to deny the WFXT renewal application filed by the Committee for Media Diversity IS GRANTED to the extent indicated above, and IS DENIED in all other respects.

27. IT IS FURTHER ORDERED, That the renewal application (BRCT-881201LM) of WFXT, Inc., for renewal of license of station WFXT, Boston, Massachusetts IS GRANTED, subject to the following condition: the transfer of control of WFXT shall be closed no later than 60 days from the release of this Decision (unless that period is extended by the staff).

28. IT IS FURTHER ORDERED, That the applicants shall state in writing their acceptance of all the conditions within 30 days from the release of this Decision.

29. The Mass Media Bureau shall mail copies of the Decision to the parties to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] The Committee for Media Diversity filed comments about the proposed transfer, but did not oppose a grant of the application at that time.

[2] We also consider Twentieth's consolidated opposition and the reply of the Committee for Community Access. The Committee for Media Diversity did not file a reply pleading.

[3] Any reassignment of the license to Twentieth would be subject to our prior approval. If station operation is "terminated," but a viable license remains, our prior approval would also be required. Twentieth would then, presumably, seek to assign the license of the silent station to a third party. Our approval would not be required if the license is surrendered and only the physical assets of WFXT, Inc., are retransferred to Twentieth.

[4] This alternative differs from the trust agreement as filed. Because the modification will provide greater financial independence to the Trustees with respect to capital expenditures, and because Twentieth has volunteered to make this modification in order to address concerns raised by the League, we shall condition our action on making the proposed change to the trust.

[5] Twentieth defines "affiliates" as "all companies that have any common ownership directly or indirectly" with Twentieth. It continues that "it is anticipated that the only 'affiliates' with whom the Trustees in their sole discretion would 'initiate or continue' communications would be the Fox Broadcasting Company, . . . Twentieth Century Fox, . . . and Fox Television Stations, Inc., . . . the [Twentieth] affiliates that currently engage in the television programming and syndication business."

[6] Twentieth initially stated that these communications would be in part oral, but by counsel's letter of November 3, 1988, and in the settlement agreement, Twentieth indicated its willingness to require written-only communications in regard to program acquisition.

[7] Twentieth asserts that its arrangement of an unconditional $12 million line of credit, which the Trustees may use in their sole discretion, provides the Trustees with financial flexibility and bars Twentieth's control of the station indirectly by control of the station's finances.

[8] For purposes of our concern here, we refer to the Fox television "network" because Fox is providing an interconnected service in which affiliates broadcast the same programming simultaneously. 47 U.S.C. §153(p). (Syndicated programming, in contrast, is not intended for simultaneous broadcast, and, in fact, the timing of the broadcast is typically for the purchaser of the program to decide. Syndicated programming may be distributed by the shipment of films or videotapes, or by common carrier.) Our reference to Fox as a network for this purpose does not signify that it meets the definition of a network contained elsewhere in our Rules. *See, e.g.*, 47 C.F.R. §73.658(j)(4).

[9] Twentieth states that in a typical broadcast week, station WFXT broadcasts about 19 hours of program material (about 14.5 percent of the total) provided by its affiliates, composed of network programs, syndicated programs, "fill" when motion pictures do not conform to time slots, commercials, and promotional announcements.

[10] In that regard, we note that, in addition to station WFXT, there are three stations in Boston affiliated with major networks, two noncommercial stations, and two independent stations. There are also independent television stations licensed to nearby Cambridge, Worcester and Marlborough that serve the Boston market. Given the competition for television programming, we believe there is little likelihood that the Trustees would substantially reduce the amount of programming broadcast by station WFXT that is provided by Twentieth's affiliates. In fact, as the Fox network service matures, it is entirely possible that it would expand the amount of programming it makes available to its affiliates.

[11] The insulation problems are not cured, in our judgment, by requiring such communications to be restricted to writing. We are not dealing with infrequent or one-time contacts, but an extensive, on-going relationship. If we are to rely on structure to

provide insulation so as to avoid the application of the multiple-ownership restrictions, we cannot permit such a significant, on-going relationship.

[12] There is no previous case that applies the cross-interest policy to a newspaper/broadcast combination, where one of the properties is placed in an insulating trust. One case concerning interests in television and radio stations in the same market found that a trust was not sufficiently insulated to meet Commission concerns. The case suggests that the cross-interest policy would not apply if insulation had been found. *Time - Life Broadcast, Inc.*, 36 F.C.C. 138 (1972). Given that precedent and the particular facts of this case, we see no reason to apply the cross-interest policy here. We note that the subject of cross interests is now under review in *Reexamination of the Cross - Interest Policy*, MM Docket No. 87-154, FCC 88-345, released February 28, 1989. Our action here should not be considered as prejudging the issues in that proceeding, which will be resolved after careful review of the comments filed there.

[13] An example is provided where a license is placed in a trust that contains a provision requiring reassignment of the license at a later date to the trustor's heirs. The fact that such a trustee holds the license subject to this provision does not determine whether control or insulation exists between the trustor and the trustee. Instead, insulation depends on the presence or absence of the factors (such as communications) listed in *Attribution*. 97 F.C.C.2d at 1023-24.

[14] In the event that Twentieth elects to use a different means of complying with the rule (that is, the outright sale of the station or the newspaper), the condition would be met by the closing of any such sale. The buyer in that case would then have a license valid until the expiration of the normal license term in 1994.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Motion for Declaratory Ruling by L-2502

TELETECH, INC.
Suite 615
23400 Michigan Avenue
Dearborn, Michigan 48124-1915

MEMORANDUM OPINION AND ORDER

Adopted: May 8, 1989; Released: May 16, 1989

By the Chief, Private Radio Bureau:

I. INTRODUCTION

1. On January 4, 1989, Teletech, Inc. (Teletech), filed a Petition for Reconsideration seeking review of a letter issued December 7, 1988, by the Chief, Land Mobile and Microwave Division (Division), of the Private Radio Bureau (Bureau). The letter dismissed Teletech's Motion for Declaratory Ruling (Motion), filed November 9, 1988, which sought a determination that requests for additional information from an applicant for a low-power, mobile only frequency, and the subsequent return of the applicant's application without action, constituted an abuse of authority by the National Association of Business and Educational Radio, Inc. (NABER), the certified frequency coordinator in the Business Radio Service. The Division dismissed Teletech's Motion on the grounds that it had failed to demonstrate a case or controversy requiring resolution through a Declaratory Ruling.

II. BACKGROUND

2. On April 14, 1987, Teletech forwarded a completed FCC Form 574 application and filing fee to NABER on behalf of the Crowley, Milner & Company (Crowley). The application was for the low-power, mobile-only frequency 461.3375 MHz in Detroit, Michigan.[1] On June 1, 1987, a NABER employee telephoned Teletech to request the submission of letters of concurrence from co-channel users of the frequency in the Detroit area. On June 3, 1987, NABER sent Teletech a written request for concurrence statements and provided a computer printout listing local co-channel users. Teletech, however, did not provide the requested statements. Rather, on June 25, 1987, Teletech wrote NABER to request that the subject application be forwarded to the Commission with or without NABER's frequency recommendation. NABER states that it did not receive Teletech's letter until after it had returned the application to Teletech on July 8, 1987. Teletech states that it never received the rejected application or the refund check NABER reportedly enclosed with the application.[2]

3. Teletech then filed a letter of complaint with the Bureau on November 30, 1987. Teletech alleged, in essence, that NABER had refused to coordinate its client's application unless letters of concurrence were furnished from co-channel licensees within a 75 mile radius. Teletech asserted that such a request was unreasonable and that letters of concurrence were not required by the Commission's Rules. In accordance with normal procedures, by letter dated January 25, 1988, the Bureau furnished NABER with a copy of Teletech's complaint and requested NABER to respond to the issues raised by Teletech. In its reply of February 10, 1988, NABER stated that it had followed its longstanding policy of minimizing the potential for interference by requesting concurrence because of the numerous co-channel users operating in the immediate vicinity of the proposed station. NABER indicated its request for concurring statements involved seven users that were operating within a ten mile radius.[3]

4. In a letter dated July 12, 1988, Teletech advised the Bureau that it was not satisfied with NABER's explanation of its actions. This letter was followed by Teletech's Motion of November 9, 1988, which, as indicated above, was dismissed on the grounds that Teletech had failed to demonstrate the need for a Declaratory Ruling. Rather, Teletech was advised to (1) refile the subject application with NABER and request that the application be forwarded to the Commission if NABER could not recommend the specific frequency in issue; or (2) request a duplicate refund check from NABER if it did not intend to resubmit the application. Teletech declined to exercise these options and filed the instant Petition for Reconsideration.

III. TELETECH'S PETITION

5. Teletech asserts that NABER has no authority to demand letters of concurrence from co-channel users, particularly for the low-power frequency in issue. Teletech argues that NABER's failure to provide a frequency recommendation was a deliberate refusal to provide service to Teletech's client. It maintains that NABER's actions in this instance were discriminatory and intended to interfere with Teletech's business.

IV. DISCUSSION

6. Teletech, as noted, initially sought a Declaratory Ruling that NABER's processing of the application in question constituted an abuse of its authority and established discriminatory conduct against Teletech. The Chief, Land Mobile and Microwave Division, Private Radio Bureau, refused to issue a Declaratory Ruling on the grounds that such extraordinary relief was not warranted under the circumstances presented in Teletech's various filings.

7. We affirm the Division's decision to deny Teletech's request for declaratory ruling. The Commission has broad discretion in deciding whether to issue a declaratory ruling.[4] This discretion is designed to be exercised to terminate a controversy or remove uncertainty.[5] In this case, however, there is no pending application for consideration. Teletech has been invited to resubmit the application on Crowley's behalf so that the issue of the propriety of Crowley's request for frequency coordination can be resolved.[6] Such action would not require a declaratory ruling, but could be routinely processed as a license ap-

plication for authorization to operate on a specified frequency. Teletech, however, has not resubmitted the application.

8. In essence, Teletech has filed a complaint with the Commission concerning NABER's request for shared user concurrence statements. Regarding NABER's request, we note that coordinators may request additional information from applicants to support their requests for particular frequencies or transmitter locations. Concurrence from co-channel users within a reasonable area of the proposed station[7] is an acceptable method for coordinators to assess interference potential from a new user on congested frequencies.[8] Accordingly, we conclude that NABER was acting within its authority in seeking concurrence statements from co-channel users.

9. If the additional information or documentation requested by coordinators, such as co-channel concurrence, is not provided, coordinators may return applications without action. Alternatively, applicants that object to such requests for supporting information may promptly notify the coordinator and ask that their applications be forwarded to the Commission for consideration and action. The coordinators should honor such requests and note their concerns and recommendations in a brief covering letter to the Commission.[9] A failure by NABER to forward the application in issue to the Commission would not, standing alone, establish discriminatory conduct, particularly in the absence of a pattern of such conduct by NABER against Teletech.

10. It is obvious from the record, however, that Teletech considered NABER's request to be unwarranted. Teletech, in this regard, followed the appropriate course of action by filing a written objection with NABER and asking that the subject application be forwarded to the Commission for consideration and action. Whether NABER received Teletech's request prior to returning the subject application to Teletech is uncertain and, moreover, immaterial to the resolution of this case. If Teletech wishes to pursue the subject application for its client, it may submit the application directly to the Commission for consideration. We consider this a unique set of events and take this action in the interest of arriving at a speedy resolution of this matter. Normally, the application would be resubmitted to the frequency coordinator.

V. CONCLUSION

11. For the reasons stated above, we conclude that there is an inadequate basis to grant Teletech the declaratory relief requested.

12. ACCORDINGLY, IT IS ORDERED that the petition for reconsideration filed by Teletech, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

FOOTNOTES

[1] This frequency is assigned on a shared rather than an exclusive basis. The maximum output power and effective radiated power requested was two watts.

[2] NABER has furnished a photocopy of a $35 check it issued to Mark W. Dobronski addressed to Teletech, Inc., dated July 7, 1987. NABER states that this check represents a partial refund of the coordination fee. Letter dated February 10, 1988, from E.B. "Jay" Kitchen, President, NABER, to W. Riley Hollingsworth, Chief, Compliance Branch, Private Radio Bureau.

[3] The precise operational radius governing NABER's request for concurrence is unclear. Although Teletech maintains that NABER requested concurrence from licensees operating within a 75 mile radius, Teletech has provided information that the NABER request concerned licensees located no more than 12.5 miles away. Letter dated July 12, 1988, from Kenneth W. Hoehn, Vice President, Teletech, Inc., to W. Riley Hollingsworth, Chief, Compliance Branch, Private Radio Bureau.

[4] *See* 5 U.S.C. § 554(e) and 47 C.F.R. § 1.2.

[5] *Id.*

[6] Teletech was invited to resubmit the Crowley application in the Division's initial December 7, 1988, decision that denied Teletech's Motion for Declaratory Ruling. *See* para. 1, *supra*.

[7] Teletech has failed to support its claim that NABER unreasonably requested concurrence from co-channel users in a 75 rather than 10 mile radius. *See* note 3 *supra*.

[8] *See, e.g.*, 47 C.F.R. § 90.175(a), which provides that coordinators may consider all "factors which may serve to mitigate potential interference."

[9] *See* Report and Order, PR Docket No. 83-737, 103 FCC 2d 1093, 1125-26 (1986), *recon. denied*, Memorandum Opinion and Order, PR Docket No. 83-737, 51 Fed. Reg. 36013 (October 8, 1986).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

US SPRINT
COMMUNICATIONS COMPANY
Limited Partnership,
Complainant

v. File No. E-89-33

NEW YORK
TELEPHONE COMPANY,
Defendant.

ORDER

Adopted: May 8, 1989; Released: May 16, 1989

By the Acting Chief, Enforcement Division, Common Carrier Bureau:

1. On October 20, 1988, US Sprint Communications Company Limited Partnership ("US Sprint"), filed a formal complaint against New York Telephone Company ("NYT"), alleging that NYT's provision of DS3 to DS1 multiplexing service was in violation of Section 201(b) of the Communications Act. By Answer filed on November 30, 1988, NYT denied that its practices connected with its offering DS3 to DS1 Special Access multiplexing was unreasonable or otherwise unlawful.

2. With the assistance of the Common Carrier Bureau's Enforcement Division, the parties entered into negotiations which have culminated in a stipulation and an agreement which settles all matters in controversy. The agreement provides, *inter alia*, that NYT will provide intermediate hub multiplexing through tariff revisions filed with a July 1, 1989, effective date and further establishes a timetable for NYT's implementation of intermediate hub multiplexing at selected NYT wire centers. We expect the parties to strictly adhere to this timetable. The parties also have agreed that if NYT for reasons beyond its control is unable to adhere to the implementation schedule, it will seek an amendment from US Sprint of such schedule. In the event that this process is unsuccessful, the parties have agreed to meet with the Enforcement Division to address the matter.

3. In view of the above, the parties have filed a joint motion to dismiss the complaint. The parties have also agreed that if NYT fails to meet its implementation schedule and fails to obtain the consent of US Sprint to an extension, US Sprint shall be without prejudice to refile its complaint. It further provides a contractual basis for damages back to the original October 20, 1988 filing date outside the context of the reinstated complaint in the event damages are awarded based on the subsequent filing. On the basis of statements contained in the joint motion, we conclude that there are no longer issues in controversy between the parties in the above-captioned complaint and that the proceeding should be terminated.

4. Accordingly, IT IS ORDERED, pursuant to authority delegated in 47 C.F.R. § 0.291, that the Joint Motion to Dismiss is GRANTED.

5. IT IS FURTHER ORDERED, that the above-captioned complaint is DISMISSED without prejudice.

FEDERAL COMMUNICATIONS COMMISSION

Howard M. Wilchins
Acting Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

MODOC RSA LIMITED PARTNERSHIP — File No. 10014-CL-P-337-B-88

For a construction permit to
establish a new cellular system
to operate on frequency block B
in the Domestic Public Cellular
Radio Telecommunications Service
to serve the California 2--Modoc
Rural Service Area

ERRATUM

Released: May 16, 1989

By the Acting Chief, Mobile Services Division:

In *Modoc RSA Limited Partnership*, DA 89-501 (Mob.Serv.Div., released May 8, 1989), paragraph 6 should be changed to read as follows:

> 6. IT IS FURTHER ORDERED that all wireline cellular applications in the California 2-Modoc RSA, other than the application of Modoc RSA Limited Partnership, ARE HEREBY DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Acting Chief, Mobile Services Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 83-657
and 84-835

In re Applications of

THE SEVEN HILLS TELEVISION COMPANY — File Nos. BRCT-8306O1KJ and BPTT-840308IQ

For Renewal of License of
Station KTVW-TV
Phoenix, Arizona

ORDER

Adopted: April 28, 1989; Released: May 1, 1989

1. By a series of Orders, the Commission designated for hearing the renewal applications for television stations owned by Spanish International Communications Corporation (SICC), Bahia de San Francisco Television Company (Bahia), and Seven Hills Television Company (Seven Hills) to determine *inter alia* whether the stations were under alien control in violation of section 310(b) of the Communications Act, 47 U.S.C. § 310(b). *See Orders*, 48 Fed. Reg. 28,549 (1983); 48 Fed. Reg. 33,539 (1983); 49 Fed. Reg. 35,691 (1984). In an initial decision, ALJ John H. Conlin found an actual violation of section 310(b), and he concluded that all three licensees, as presently structured, are unqualified to remain Commission licensees. *Spanish International Communications Corp.*, FCC 86D-1 (Admin.L.J. 1986).

2. Without addressing the merits of the ALJ's conclusion that the three licensees are not fully qualified, the Commission approved a settlement agreement among SICC, Bahia, and Spanish International Network (SIN); granted renewals for the stations licensed to SICC and Bahia subject to the assignment of the licenses to qualified buyers that were not controlled by alien owners; and terminated the proceeding with respect to SICC and Bahia. *Spanish International Communications Corp. (SICC)*, 2 FCC Rcd 3336 (1987).

3. The Commission found that, even assuming the validity of the ALJ's conclusions on the alien ownership issue, approval of the settlement agreement would serve the public interest. In doing so, the Commission noted its "essentially remedial purpose" in designating this proceeding for hearing and the absence of any allegations of misrepresentations or similar misconduct by SICC, Bahia, or Seven Hills that would warrant their absolute disqualification. *Spanish International Communications Corp.*, 2 FCC Rcd at 3339-40 ¶ 16-17. The Commission approved the settlement agreement because it was satisfied that the sale of the SICC and Bahia stations to unrelated, third parties that were not alien-controlled would cure any prior section 310(b) violation.

4. After the Commission approved the settlement agreement, the Mass Media Bureau approved the transfer of control of Spanish International Communications Corporation to SICC Holding Corp., and the assignment of the license for the one Bahia station to SICC Acquisition Corp. *Spanish International Communications Corp.*, 2 FCC Rcd 3962 (1987), review denied, 3 FCC Rcd 4319 (1988), appeal pending sub nom. *Coalition of Hispanic Broadcasting v. FCC*, No. 87-1285 (D.C. Cir. filed June 26, 1987). SICC Holding Corp. and SICC Acquisition Corp. are subsidiaries of Hallmark Cards, Inc.

5. Seven Hills, which was not a party to the settlement agreement, continued to prosecute its applications for renewal of the license for station KTVW (Phoenix, Arizona), and for a construction permit for a low power/translator facility on K52AO (Tucson, Arizona). By its Decision of November 12, 1987, the Review Board found that Seven Hills was not under alien control, in violation of section 310(b), and that it was fully qualified. *Seven Hills Television Co.*, 2 FCC Rcd 6867 (Rev. Bd. 1987), recon. dismissed, 3 FCC Rcd 826, recon. denied, 3 FCC Rcd 879 (Rev. Bd. 1988).

6. Nevertheless, the Board found that the *potential* for alien control remained, and that conditions restricting financial and business dealings between Seven Hills and various aliens or alien-owned entities were necessary to ensure future compliance with the statute. Accordingly, the Board conditionally granted Seven Hills' applications. On March 28, 1988, the Mass Media Bureau, Emilio Azcarraga Milmo, and Seven Hills Television Company[1] filed applications for review of the Review Board's Decision conditionally granting Seven Hills' applications.[2]

7. In its application for review, the Bureau argued that Commission precedent requires Seven Hills' absolute disqualification, and that the Board erred in determining that the Bureau (and not the licensee) should have the burden of proof on the alien ownership issue. Seven Hills, arguing that there is no potential for future section 310(b) violations, requested that the Commission delete the conditions and unconditionally grant its applications. Azcarraga, who is not a party to this proceeding, also objects to the conditions that the Board imposed on the grant of Seven Hills' applications. According to Azcarraga, these conditions, which explicitly prohibit Seven Hills from dealing with Azcarraga or his family, unnecessarily impugn Azcarraga's personal reputation and restrict his business activities.

8. While the above-described applications for review were pending before the Commission, Seven Hills signed a contract to sell its assets to Hallmark. Pursuant to the sales contract, Seven Hills filed a Motion to Hold In Abeyance Consideration of Pending Applications for Review on January 12, 1989, and an application for consent to the assignment of station KTVW-TV (Phoenix, Arizona) and its associated low-power station to Hallmark Acquisition, Inc. (a subsidiary of Hallmark) on January 23, 1989.

9. Subsequently, on January 25, 1989, Seven Hills filed a Motion requesting that the Commission dismiss or deny with prejudice the applications for review filed by Azcarraga, Seven Hills, and the Mass Media Bureau, conditioned on the approval and prompt consummation of the pending assignment of Seven Hills' assets to Hallmark. Thereafter, on February 3, 1989, Emilio Azcarraga filed a Response, and the Mass Media Bureau filed Comments, to

Seven Hills' Motion. In response, Seven Hills filed a Reply to Azcarraga's Response and to the Bureau's Comments on February 13, 1989.

10. In support of its Motion, Seven Hills urges that the proposed sale of station KTVW-TV to a Hallmark subsidiary eliminates the need to resolve the designated alien ownership issue, and moots the matters raised in the three pending applications for review. Relying on the Commission's approval of the sale of the SICC and Bahia stations to an unrelated third party without resolving the section 310(b) issue, Seven Hills claims that section 310(b) of the Communications Act is purely remedial in nature. According to Seven Hills, the proposed assignment will remedy immediately any violation of the statutory proscription against alien control.

11. Neither Azcarraga nor the Mass Media Bureau opposes Seven Hills' request that the Commission conditionally deny or dismiss the pending applications for review. Both Azcarraga and the Bureau agree that the approval and consummation of the assignment application would moot the alien ownership issue. Nevertheless, each requests that the Commission either vacate certain aspects of the Review Board's decision or address the merits of various matters raised in their respective applications for review.

12. Specifically, Azcarraga requests that the Commission vacate the conditions that the Board imposed on the grant of Seven Hills' applications. In this regard, Azcarraga contends that the conditions were intended to apply exclusively to Seven Hills. Azcarraga claims that, in view of the proposed assignment of station KTVW-TV to Hallmark, the conditions are no longer necessary. In reply, Seven Hills does not object to Azcarraga's request that the Commission vacate the conditions that the Board imposed on the grant of its applications, provided this does not delay resolution of this adjudicatory proceeding.

13. Although the Bureau supports the requested dismissal of the applications for review filed by Seven Hills and by Azcarraga, it continues to believe that the Review Board committed legal error in concluding that the Bureau, rather than the licensee, had the burden of proof on the alien ownership issue. Asserting that this error could be decisionally significant in other cases, the Bureau requests that the Commission either consider that portion of its Application for Review addressing the burden of proof question, or vacate that aspect of the Board's decision. In the interest of expedition, however, the Bureau does not oppose the dismissal of its Application for Review in any other respect.

14. The parties are correct that the approval and consummation of the proposed assignment of station KTVW-TV to Hallmark would effectively moot the designated section 310(b) issue. As noted above, the Commission conditionally granted renewal applications for the SICC and Bahia stations, pending assignment of their licenses to an unrelated third party. Having determined that such an assignment would serve the public interest by ensuring immediate compliance with the statute, the Commission approved the settlement agreement without reviewing the ALJ's conclusion that, by virtue of the section 310(b) violation, the licensees were not qualified to retain their licenses.

15. Seven Hills, like SICC and Bahia, proposes to assign its assets to an unrelated buyer. Therefore, the public interest considerations underlying the Commission's approval of the SICC settlement agreement, despite the adjudicated section 310(b) violation, likewise support granting Seven Hills' request that the Commission conditionally dismiss the pending applications for review subject to approval and consummation of the assignment application.[3] Consistent with its approval of the SICC settlement without reviewing the ALJ's determination that SICC and Bahia lacked the basic qualifications to continue operating their stations, the Commission need not determine whether Seven Hills violated the statute if the proposed assignment is approved and consummated. By the same token, the subsidiary issues of which party should have had the burden of proof on the alien ownership issue, whether the Board exceeded its authority in reallocating the burden of proof to the Bureau, and whether the Bureau should have had the burden of proof under the circumstances of this case, need not be resolved. Consummation of the proposed settlement would effectively terminate the controversy between the parties, thereby rendering moot the Bureau's challenge to the Board's resolution of the burden of proof question.

16. Under Commission precedent, conclusions that become moot while an appeal is pending may be vacated. *A.S.D. Answer Service*, 1 FCC Rcd 753, 755-56 ¶ 20 (1986), recon. denied, 3 FCC Rcd 4213, 4214-15 ¶¶ 13-14 (1988).[4] In accordance with that precedent, we will vacate the conclusions made in that portion of the Review Board's decision concerning the burden of proof question without determining whether the Board had the authority to reallocate the burden of proof, or whether the Board was correct that the Bureau should have had the burden of proof under the circumstances of this case.

17. Because the proposed assignment eliminates the need to resolve the question of Seven Hills' actual compliance with the statute, we will likewise vacate as moot the Board's legal conclusion that a conditional renewal was necessary to ensure future compliance with the statute, as well as the conditions themselves. *A. S. D. Answer Service*, 1 FCC Rcd 753, 755-56 ¶ 20 (1986), recon. denied, 3 FCC Rcd 4213, 4214-15 ¶¶ 13-14 (1988); *Constance J. Wodlinger*, FCC 85-335 ¶ 2 n.7 (July 10, 1985). The Board determined, based on its review of the record, that an actual violation of the statute had not been demonstrated. Nevertheless, it found that there were extensive and longstanding ties between Seven Hills and the Azcarraga family necessitating conditions that would restrict future business and financial relationships between the licensee and these individuals.

18. Having determined that Seven Hills was fully qualified to retain its license for station KTVW-TV, the Board imposed conditions designed only to ensure future compliance with the statute. In this regard, the restrictive conditions related specifically to Seven Hills' proposal to continue operating station KTVW-TV. However, once the pending application to assign Seven Hills' assets to Hallmark is approved and the assignment is consummated, Seven Hills will no longer be the licensee of station KTVW-TV. Thus, in view of the proposed assignment, the conditions that the Board imposed are no longer necessary, regardless of the propriety of their imposition in the first place.

19. Therefore, it need not be determined whether the Board exceeded its authority in granting only a conditional renewal, whether the record supports the imposition of the conditions, or whether the conditions are overbroad, as both Seven Hills and Azcarraga allege in their applications for review. Nor need consideration be

given to whether the conditions restricting future dealings between Emilio Azcarraga, his family, and Seven Hills principals impermissibly impugn Azcarraga's reputation and unnecessarily restrict his business activities, or whether non-party Azcarraga has standing to raise these matters at this time. The applications for review raising these arguments may therefore be dismissed subject to the condition that the assignment application is granted and the proposed assignment of Seven Hills' assets to Hallmark or to another qualified buyer is consummated.

20. ACCORDINGLY, IT IS ORDERED, That pursuant to authority delegated under 47 C.F.R. § 0.251(f) of the Commission's Rules, the Motion to Conditionally Dismiss or Deny With Prejudice the Pending Applications for Review, filed on January 23, 1989, by Seven Hills Television Company IS GRANTED; and that the Motion to Hold In Abeyance Consideration of Pending Applications for Review, filed on January 12, 1989, by Seven Hills Television Company IS DISMISSED as moot.

21. IT IS FURTHER ORDERED, That the Information Filing Concerning Change of William Stiles' Relationship with Hallmark, filed April 1, 1988 by Seven Hills IS ACCEPTED.

22. IT IS FURTHER ORDERED, That, subject to the approval and prompt consummation of the proposed assignment of Seven Hills to Hallmark or to another qualified, unrelated buyer:

(1) the applications for review filed on March 28, 1988 by Seven Hills, by the Mass Media Bureau, and by Emilio Azcarraga Milmo, ARE DISMISSED with prejudice and the following pleadings ARE DISMISSED as moot: (a) Motion for Leave to File Brief in Support of Application for Review, and a 26-page Brief in Support of Application for Review, filed on March 28, 1988, by Seven Hills; (b) Motion to Strike Seven Hills' Brief, filed on March 31, 1988, by the Mass Media Bureau; (c) Response to the Bureau's Motion to Strike, filed on April 1, 1988, by Seven Hills; (d) Oppositions to the Applications for Review, filed on April 28, 1988, by the Mass Media Bureau; (e) an Opposition to the Mass Media Bureau's Application for Review, filed on April 28, 1988, by Seven Hills; (f) Consolidated Response to Applications for Review, filed on April 28, 1988, by Azcarraga; (g) Motion for Leave to File Reply and a Reply to the Mass Media Bureau's Opposition, filed on May 10, 1988, by Seven Hills; and (h) Notice of Intention to File Application for Review, filed December 14, 1987 by the Mass Media Bureau.

(2) paragraphs 24 and 70 of the Board's decision, 2 FCC Rcd 6867 (1987), ARE VACATED; and

(3) the proceeding in MM Docket Nos. 83-657 and 84-835 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Diane S. Killory
General Counsel

FOOTNOTES

[1] On March 28, 1988, Seven Hills also filed a Motion for Leave to File Brief in Support of Application for Review, and a 26-page Brief in Support of Application for Review. The Mass Media Bureau filed a Motion to Strike Seven Hills' Brief on March 31, 1988, and Seven Hills filed a Response to the Bureau's Motion to Strike on April 1, 1988. In view of the action herein conditionally dismissing the applications for review, these pleadings are moot.

[2] On December 14, 1987, the Mass Media Bureau filed a Notice of Intention to File Application for Review. On April 28, 1988, the Mass Media Bureau filed Oppositions to the Applications for Review filed by Seven Hills and by Azcarraga; Seven Hills filed an Opposition to the Mass Media Bureau's Application for Review; and Azcarraga filed a Consolidated Response to Applications for Review. On May 10, 1988, Seven Hills filed a Motion for Leave to File Reply and a Reply to the Mass Media Bureau's Opposition. In view of the action herein conditionally dismissing the applications for review, the foregoing pleadings are moot. Also before the Commission is an Information Filing Concerning Change of William Stiles' Relationship with Hallmark, filed April 1, 1988 by Seven Hills. The Information Filing, which reports that Seven Hills' principal, William Stiles, was hired to manage Univision (formerly SIN and now owned by Hallmark), may be accepted.

[3] The fact that the Board considered the merits of the ALJ's findings of fact and conclusions of law on the alien ownership issue, with respect to station KTVW-TV but not with respect to the SICC and Bahia stations, does not preclude the requested relief. In this regard, unreviewed ALJ's findings and conclusions do not have less significance than unreviewed conclusions of the Review Board. *Stereo Broadcasters, Inc.*, 74 FCC 2d 543, 545 ¶ 8 (1979) ("[a]n initial decision is not a mere report to be arbitrarily disregarded. In the absence of review, the initial decision is the decision of the agency."), *aff'd sub nom. Stereo Broadcasters, Inc. v. FCC*, 652 F.2d 1026, 1030 (D.C. Cir. 1981). In any event, the Board concluded that, despite the potential for alien control in the future, Seven Hills' absolute disqualification was not warranted.

[4] *See* generally *United States v. Munsingwear*, 340 U.S. 36, 39-41 (1950) ("The established practice of the [Supreme] Court in dealing with a civil case from a court in the federal system which has become moot while on its way here pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss"). *See also National Ass'n of Independent Television Producers & Distributors v. FCC*, 516 F.2d 760, 765 (D.C. Cir. 1975) (where issue before the court became moot during pendency of the court appeal, the court remanded the proceeding so that the Commission could vacate its order); *Constance J. Wodlinger*, FCC 85-335 (July 10, 1985) (on its own motion, Commission vacated findings rendered moot by the parties' settlement agreement while appeal was pending).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of

TELESTAR, INC. Applications for Authority to Construct New Common Carrier Point-to-Point Microwave Radio Stations (CC Docket No. 85-202; File Nos. 1743 CF-P-85 through 1757 CF-P-85)

Petition for Revocation of Operating Authority for MCI TELECOMMUNICATIONS CORPORATION

Petition for Revocation of Operating Authority for MCI TELECOMMUNICATIONS CORPORATION Revisited

Petition for Revocation of Operating Authority for WESTERN TELE-COMMUNICATIONS, INC.

ORDER

Adopted: April 27, 1989; Released: April 28, 1989

By the Commission:

1. By letter dated August 9, 1988, the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, U.S. House of Representatives (Subcommittee), informed the Commission that it was conducting an inquiry into the above-captioned proceedings. By letters from the Chairman dated September 9, 1988, September 16, 1988, and February 28, 1989, the Commission provided copies of certain documents requested by the Subcommittee and declined to provide copies of certain other documents, *e.g.*, non-public, deliberative documents. By letter dated April 3, 1989, the Subcommittee requested that the Commission provide copies of the previously-withheld documents, and also stated that it would be necessary for the Subcommittee staff to conduct interviews with various Commission personnel. In addition, the General Accounting Office (GAO) has commenced an informal inquiry that relates in part to these proceedings.

2. All of these proceedings are "restricted" adjudicatory proceedings under the Commission's *ex parte* rules. *See* 47 C.F.R. § 1.1208.[1] These rules prohibit communications relative to the merits or outcome of a proceeding, made either to or from Commission decision-making personnel, unless, if written, they are served on the parties or, if oral, the parties have an opportunity to be present. *See* 47 C.F.R. §§ 1.1202(a), 1.1202(b), 1.1208(a).

3. Compliance with the Commission's *ex parte* rules in restricted adjudications is of critical importance in light of the *ex parte* rules purposes of "ensur[ing] that the Commission's decisional processes are fair, impartial, and otherwise comport with the concept of due process" and of "deter[ing] improper communications and maintain[ing] the utmost public confidence in Commission proceedings . . . ." *See* 47 C.F.R. § 1.1200(a). These rules are enforced strictly and waived only in extremely rare circumstances. A difficult question would be raised, for example, whether to waive the *ex parte* rules where such waiver would merely facilitate a congressional investigation that was prompted by a general concern about the substantive outcome of an adjudicatory proceeding. Here, however, subsequent to our decisions in these proceedings, the Commission was informed of specific allegations of possible misconduct by Commission staff.[2] In light of these specific allegations of possible misconduct, as well as assurances from congressional staff that the investigation is concerned only with the possibility that agency misconduct affected our decisions and not with the substance of those decisions themselves, we believe that it is appropriate for the Commission to facilitate congressional exercise of its oversight powers with respect to the integrity of the Commission's processes.

4. Accordingly, in order to permit the interviews requested by the Subcommittee and to provide access to the previously-withheld documents requested by the Subcommittee, the Commission is hereby waiving its *ex parte* rules in these proceedings to the extent set forth herein. Specifically, the Commission will permit Commission personnel to respond to all questions from the Subcommittee (and the GAO) in connection with their inquiries[3] and will provide access to the Subcommitteee (and, if requested, to the GAO) to the previously-withheld documents.[4] This waiver[5] is permissible under the Administrative Procedure Act (APA), which provides that the APA's *ex parte* restrictions (which apply here to CC Docket No. 85-202) do "not constitute authority to withhold information from Congress." 5 U.S.C. § 557(d)(2).

5. In order to protect the due process rights of the parties to these proceedings[6] and in order to comply with the *ex parte* requirements of the APA,[7] the Commission is not waiving those portions of its *ex parte* rules that prohibit communications regarding the merits or outcome of the proceedings that are transmitted *from* the Subcommittee or the GAO *to* Commission decision-makers. Neutral questioning by the Subcommittee or GAO staff is permissible; if, however, the Subcommittee or GAO staff conducting the interviews expresses a view, directly or indirectly, to Commission decision-making personnel as to the merits or outcome of the proceedings, the Commission decision-maker to whom the view is expressed must file a memorandum with the Managing Director reporting any such expression of views. *See* 47 C.F.R. § 1.1212(b).[8] Any such memoranda will be served on the parties to the relevant proceeding and placed in a public file associated with, but not a part of, the record in that proceeding. *See* 47 C.F.R. § 1.1212(d),(e); 5 U.S.C. § 557(d)(1)(C). As an additional mechanism for protecting the due process rights of the parties, the Commission is requesting that, until the pending court appeals and any subsequent proceedings are completed, the Subcommittee and GAO not make available to others any information relating to the merits or outcome of the proceedings that it garners from the interviews or the previously-withheld documents.

6. The Commission finds that good cause exists for waiver of its *ex parte* rules as set forth above and that such waiver will serve the public interest. *See* 47 C.F.R. §§ 1.3, 1.1200(a). In addition, this Order constitutes Commission approval, pursuant to 47 C.F.R. §§ 0.463 and 19.735-206,

for disclosure, by current and former Commission personnel,[9] to the Subcommittee and GAO of information regarding the above-referenced proceedings in connection with the Subcommittee or GAO interviews and for access at the Commission's offices by the Subcommittee (and GAO if requested) to documents previously withheld by the Commission.

7. Accordingly, IT IS ORDERED that the Commission's *ex parte* rules ARE WAIVED to the extent set forth above.

8. IT IS FURTHER ORDERED that the disclosure of information to the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, U.S. House of Representatives, and the General Accounting Office, as set forth in this order, IS AUTHORIZED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Because they are pending before the United States Court of Appeals for the District of Columbia Circuit, *see* Nos. 88-1153, 88-1419, 88-1420, 88-1445, 88-1834, 89-1144, and 89-1156 (D.C. Cir.), the proceedings remain subject to the Commission's *ex parte* rules. 47 C.F.R. § 1.1208(a).

[2] *See* Complaint, TeleSTAR, Inc. v. MCI Communications Corp., No. 89-C-0068-S (D. Ut. 1989), served on the Commission on January 31, 1989, as an attachment to "Amendment to the Docketing Statements" in D.C. Cir. Nos. 88-1153, 88-1419 and 88-1832. *Compare* TeleSTAR, Inc. "Reply to WTCI's June 10, 1988 Response -- On Who Owns the Tower on its Sodrac Repeater Site," filed June 27, 1988. The Commission initiated its own informal investigation as a result of these specific allegations. The investigation revealed no evidence that the Commission's processes have in any way been tainted.

[3] The interviews shall be conducted in accordance with the procedures agreed to by Subcommittee staff -- namely, that all interviewees will be permitted to have counsel present and to tape record the interviews. In addition, as discussed in paragraph 5, *infra*, the interviewers have agreed to attempt to phrase their questions neutrally so as not to express views on the merits of the proceedings.

[4] The Subcommittee staff (or the GAO, if requested) will be permitted to review the documents at the Commission's offices. To the extent, after such review, they believe any particular documents relate to agency misconduct, they will be provided copies of such documents.

[5] Because the Common Carrier Bureau participated in CC Docket No. 85-202 as a party, not as a decision-maker, the Commission's *ex parte* rules do not apply to it with respect to that hearing proceeding. Accordingly, a waiver is unnecessary to permit *ex parte* communications between Common Carrier Bureau staff and the Subcommittee with respect to the CC Docket No. 85-202 hearing proceeding.

[6] *See, e.g., Koniag, Inc. v. Andrus*, 580 F.2d 601 (D.C. Cir. 1978); *Pillsbury v. FTC*, 354 F.2d 952 (5th Cir. 1966).

[7] *See* 5 U.S.C. § 557(d)(1)(A). The APA "prohibitions on ex parte communications relative to the merits apply to communications from Members of Congress . . . ." H.R. Rep. No. 880-Part I, 94th Cong., 2d Sess. 21-22 (1976), *reprinted in* 1976 U.S.Code Cong. & Ad. News 2183, 2203. As noted, the APA *ex parte* restrictions apply to CC Docket No. 85-202.

[8] The Subcommittee and GAO are being advised that any such expression of views will trigger the disclosure requirements under our *ex parte* rules. Accordingly, Commission decision-making personnel being interviewed need not separately so advise the Subcommittee or GAO staff, as otherwise required by 47 C.F.R. § 1.1212(a).

[9] In light of this order, former Commission personnel need not request approval pursuant to FCC Directive, FCC INST 1113.4, Att. 1, to participate in interviews with the Subcommittee or GAO in connection with the above-referenced proceedings.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: May 16, 1989

PLEADING CYCLE ESTABLISHED FOR AMERICAN PUBLIC COMMUNICATIONS COUNCIL PETITION FOR DECLARATORY RULING

On April 21, 1989, the American Public Communications Council (APCC) filed a petition for declaratory ruling that interstate end user common line (EUCL) access charges are inapplicable to all public pay telephones. APCC claims that even though EUCL access charges are not assessed on lines connected to public payphones owned by local exchange carriers (LECs), LECs have been billing the owners of non-LEC public payphones for EUCL access charges at the multiline business rate.

APCC argues that although non-LEC payphones did not exist when the Commission adopted its Part 69 access charge rules, neither the terms of these rules nor the policies underlying them justifies imposition of EUCL access charges on non-LEC public payphones. It claims that EUCL access charges apply only to "end users," as that term is defined in the Commission's access charge rules, and that the owners of non-LEC public payphones do not fit within this definition. It claims, further, that the policy considerations underlying the exclusion of LEC public payphones from EUCL access charges apply equally to non-LEC public payphones. In particular, it argues that the basis of the Commission's decision to exclude LEC public payphones from EUCL access charges was that these phones are not dedicated to a single end user and that non-LEC public payphones also are not dedicated to a single end user. APCC states that LECs should recover the non-traffic-sensitive (NTS) costs of lines serving non-LEC public payphones in the same way that they recover NTS costs for LEC public payphones – *i.e.*, through carrier common line charges assessed on interexchange carriers.

Interested parties may file comments on APCC's petition by **June 14, 1989,** and reply comments by **July 6, 1989.** Comments and reply comments must be filed with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy of all filings should be sent to Gary Phillips, FCC, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public records duplication, International Transcription Services, Inc. ("ITS"), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of APCC's petition may be obtained from ITS by calling (202) 857-3800.

For further information contact Gary Phillips, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-4047.

Before the
Federal Communications Commission
Washington, D.C. 20554

In Re Application of

VIA/NET COMPANIES File No. 747145
San Diego, California

For a waiver of the Rules to allow the use of a transmitter of 50 watts output power in the 2.5 GHz band.

WAIVER

Adopted: May 5, 1989; Released: May 17, 1989

By the Chief, Land Mobile and Microwave Division:

1. Via/Net Companies (Via/Net) seeks a waiver of Section 94.73(a) of the Commission's Rules, 47 C.F.R. § 94.73(a), to allow use of a transmitter of 50 watts output power in the 2.5 GHz frequency band (H-group channels) in the Private Operational Fixed Microwave Service (OFS).

2. Via/Net has filed the above-captioned application in the OFS requesting certain modifications to station WHJ-951 authorized on channel H2 (2665 MHz) in the Cleveland, Ohio area. Via/Net wishes to relocate this facility 7.9 miles from its present site, increase transmitter output power to 50 watts,[1] and increase its effective isotropic radiated power (EIRP)[2] to +21.7 dBW. Section 94.73(a) limits output power to 20 watts and EIRP to +45 dBW.

3. Via/Net states that an increase in transmitter output power is necessary to provide service to a significant portion of the Cleveland market and to maximize reliability. The antenna and transmission line to be employed are currently in place and being used by other Instructional Television Fixed Service (ITFS) licensees at the proposed site. The gain of the omni-directional antenna is relatively low at 10 dbi and the 700 feet of wave-guide introduce an inordinate amount of losses to the system. A higher transmitter power, therefore, is necessary to compensate. Via/Net indicates that the increase in transmitter output power will not increase the EIRP beyond the maximum allowed by Commission Rules.

4. The intent of limiting output power is to minimize interference potential and maximize spectrum reuse. Granting Via/Net's request would not appear to undermine that intent. Transmitter output power is relevant in determining whether a system may cause co-channel interference. EIRP and separation criteria, however, are the primary determinants in this instance for channel reuse.[3] Via/Net is applying for an EIRP that is well within the limits under Section 94.73. The potential for co-channel interference would remain approximately the same if Via/Net achieved the EIRP it proposes by using costly higher gain omnidirectional antennas or numerous directional antennas. Via/Net is authorized (as are all H-channel licensees) for a 25 mile radius of operation regardless of transmitter output power or EIRP. No other entity can apply for the same channel in its area unless it can demonstrate non-interference to Via/Net. Consequently, the availability of channel H2 or the reuse of it in the Cleveland area is relatively independent of transmitter output power.

5. We conclude that Via/Net has demonstrated good cause for waiving Section 94.73(a) of the Rules and that a waiver would not undermine the intent of the Rules to minimize interference. Accordingly, we find the operation proposed to be in the public interest. *Thomas Radio v. FCC*, 716 F.2d 921 (D.C. Cir. 1983); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

6. Pursuant to Sections 0.331 and 1.3 of the Commission's Rules, 47 C.F.R. §§ 0.331 and 1.3, Via/Net's request for waiver of Section 94.73(a) associated with the above-captioned application IS GRANTED for an indefinite term.

FEDERAL COMMUNICATIONS COMMISSION

Richard J. Shiben
Chief, Land Mobile and
Microwave Division

FOOTNOTES

[1] Station WHJ-951 is currently authorized for 10 watts transmitter output power and +21 dBW EIRP.

[2] EIRP is the transmitter output power plus antenna gain, minus any line losses.

[3] We apply a 50 mile station separation criterion for the 2.5 GHz band.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-35

In the Matter of

DEFINITION OF A CABLE
TELEVISION SYSTEM

ERRATUM

Released: May 17, 1989

This document corrects the dates on which comments and reply comments are due on the Notice of Proposed Rule Making (FCC 89-40) in the captioned proceeding. The correct dates are June 9, 1989, and July 10, 1989, respectively.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

TIMOTHY ROPER File No. 19553-C/L-P-144-A-86

For authority to construct and
operate a cellular system
in the Domestic Public Cellular
Radio Service to serve the
Orange County, New York, MSA

MEMORANDUM OPINION AND ORDER ON REVIEW

Adopted: May 4, 1989; Released: May 17, 1989

By the Commission:

1. Cellular of NW Ohio, Inc. (CNWO) has filed an application seeking review of a Mobile Services Division's (MSD) decision in *Timothy Roper*, 2 FCC Rcd 3439 (Mob. Serv. Div. 1987) (*MO&O), recon. den.*, 2 FCC Rcd 4458 (Mob. Serv. Div. 1987) (*Order),* which denied CNWO's and Continental Investment Corporation's Petitions to Deny the above captioned application. In its *Order*, the MSD denied the petition to deny filed by CNWO, and reaffirmed the earlier *MO&O*'s grant of the application of Timothy Roper for authority to construct a cellular telephone station in Orange County, New York.[1] The MSD rejected CNWO's financial and technical challenges to the Roper application concluding that the defects raised by CNWO were not subject to the "letter perfect" standard. Timothy Roper (Roper) filed an opposition to the Application for Review.

BACKGROUND AND CONTENTIONS

2. In its petition to deny, CNWO argued that the "letter perfect" standard applies to post-lottery review of applications tentatively selected in cellular lotteries. Specifically, CNWO argued that the Roper application contained technical defects and inconsistencies which, judged according to the "letter perfect" standard, render the application defective. CNWO argued that the Roper application (1) improperly combined information required by Section 22.13(a)(1) and 22.13(a)(2) of the Rules in a single exhibit in violation of Commission guidelines; (2) contained inconsistent total cost figures in Exhibit 4-2; (3) referred to a nonexistent exhibit; and (4) omitted the height of the antenna tip in the vertical profile sketch for each cell site as required by Section 22.15(c)(1)(i) of the Rules.[2]

3. Citing *Johnstown Cellular Communications Co.*, 1 FCC Rcd 1164 (Com. Car. Bur. 1986) (*Johnstown Cellular),* the MSD rejected CNWO's arguments, stating that the "letter perfect" standard applies only to certain specified pre-lottery filing requirements. The MSD stated that Section 22.20 of the Rules governs applications at the tentative selectee stage. It stated that Section 22.20 requires dismissal of defective applications, *i.e.* those applications which lack complete answers to questions, informational showings, execution, or other matters of a formal character. It further stated that an application which contains information that is generally complete but contains minor errors is not defective. *Order* at 4458. The MSD found that the information in Roper's application was complete, and that the technical points raised by CNWO were insignificant.

4. In its Application for Review, CNWO asserts that the "letter perfect" standard demands rejection of an application for any defect, and that an application containing defects may not be salvaged once filed. Petition at 3. In addition, CNWO argues that MSD's reliance on *Johnstown Cellular* was erroneous. CNWO argues that *Johnstown Cellular* improperly changes the "letter perfect" standard of review for cellular applications to "mere compliance with the cellular application standards." CNWO states that by this change, the Common Carrier Bureau exceeded its authority because it changed in an adjudicative proceeding a standard adopted by a Rule Making. CNWO argues that the "letter perfect" standard can only be changed by formal Rule Making procedures. Finally, CNWO argues that the failure of an agency to comply with its own regulations constitutes arbitrary and capricious conduct.

5. In opposition, Roper asserts that the "letter perfect" standard applies to the pre-screening of cellular applications, rather than to post-lottery review. Roper states that the "letter perfect" standard was intended by the Commission to be invoked with respect to the initial processing requirements for cellular applications as part of an attempt to streamline the application intake and pre-screening process. Accordingly, Roper concludes that the *Johnstown Cellular* decision is consistent with the Commission's Rule Makings which established the "letter perfect" standard.

DISCUSSION

6. We find that Roper's application was properly granted, and thus we affirm the Division's Order. First, CNWO's arguments concerning the proper application of our "letter perfect" standard for cellular applications were, in large measure, considered and rejected in *Jacksonville Cellular Telephone Corporation*, 3 FCC Rcd 5386 (1988) (*Jacksonville).* In particular, the *Jacksonville* decision affirmed the Common Carrier Bureau's explanation of the "letter perfect" standard as set forth in its *Johnstown Cellular* decision. The *Johnstown Cellular* decision held that the "letter perfect" standard only applies to certain, specified pre-lottery filing requirements. Those requirements were that the applicant must (1) certify to the completeness of its application, (2) submit an original application and paper duplicate, the cover of which had to include the applicant's name, market name, market number and frequency block for which it was applying, and (3) provide two microfiche copies of its application at the time of filing. *See Cellular Lottery Reconsideration Order*, 59 Rad. Reg. 2d (P&F) 407, 410 at n.16 (1985). [3]

7. We also find no merit in CNWO's contention that the Bureau's and our interpretation of the "letter perfect" standard results in a modification of our rules without the appropriate notice and comment. The "letter perfect" standard was originally promulgated in the *Cellular Lottery Rule Making*, 58 Rad. Reg. 2d (P&F) 677, 695 (1985), and required that applications that failed to be filed in a

"letter perfect" condition would be dismissed as unacceptable for filing.[4] We indicated that we were adopting these new, stricter, pre-screening requirements because we were receiving so many applications that processing them had become a very time-consuming task such that attempting to process defective applications placed an undue burden on the Commission's resources. Thus, in order for our pre-screening process to move more smoothly, we required that in the future all cellular applications had to be submitted in "letter perfect" condition. On reconsideration, NewVector Communications, Inc. convinced us that these pre-screening procedures could be slightly less strict. Rather than review each application prior to the lottery, we decided that each application would only be reviewed in its entirety prior to the lottery for certain, minimal information. Failure to provide this information, which was described in footnote 16 of the *Cellular Lottery Reconsideration Order*, 59 Rad. Reg 2d (P&F) 407 (1985), and is the same information described in *Johnstown* and *Jacksonville* as covered by the letter perfect standard (*see* para. 6, *supra),* would result in the application being dismissed as unacceptable for filing. After the lottery, the tentative selectee's application was to be "carefully reviewed to ensure its compliance with the cellular application standards." *Cellular Lottery Reconsideration Order*, 59 Rad. Reg. 2d (P&F) at 410. Moreover, as we indicated in footnote 17 of that decision that amendments could be filed after our careful review, we obviously did not expect applications to be error-free, but rather only that there would be sufficient information to process them. In short, only the information required for pre-screening conducted prior to the lottery had to meet the "letter perfect" standard. Thus, our interpretation of the "letter perfect" standard, as explained in *Johnstown* and *Jacksonville*, is consistent with the processing standards that we adopted in the cellular lottery proceeding, and there has been no impermissible rule modification in violation of the Administrative Procedure Act.

8. Furthermore, as the preceding discussion demonstrates, the MSD correctly concluded that as the various defects discussed by CNWO in its petition to deny did not involve those matters that were subject to the "letter perfect" standard, we are not required to dismiss the application pursuant to that standard. We must, however, determine whether the technical defects that CNWO uncovered in the Roper application render it unacceptable for filing under Section 22.20 of the Rules. We agree with the MSD that they do not. As the MSD correctly stated, these defects were minor in nature, did not hinder the processing of the application, and were clarified by Roper in its Opposition to Petition for Reconsideration after the MSD found the application acceptable for filing. *See e.g., Jacksonville Cellular Telephone Corporation*, 3 FCC Rcd 5386 (1988). Specifically, with respect to the defects enumerated in paragraph 2, *supra*, we find the following. First, although the information required by Sections 22.13(a)(1) and 22.13(a)(2) was improperly combined into one exhibit in contravention of our guidelines[5], nevertheless, all the information required by the rules was submitted in an exhibit which was clearly labeled by subject matter and applicable rule section. Second, the total cost figures contained in Exhibit 4-2 of the application are not inconsistent. These figures, which represent the cumulative funds required for construction and operation, include the estimated expenses for construction and first year operation and a $75,000 cushion in excess of those costs to cover any contingencies. These figures are consistent with Roper's financial commitment letter. Third, Roper indicated in its Opposition that the reference to a nonexistent exhibit was merely a typographical error. Finally, because the antenna will be side-mounted, the height of the antenna support structure above ground level is identical to the height of the antenna tip and is shown in the vertical profile sketch. In addition, the height of the antenna tip for each cell is provided in Schedule B of the application. In light of the foregoing, it is clear that the information contained in the application is generally complete, and that the defects at issue did not hinder the processing of the application. Accordingly, the MSD correctly found the Roper application acceptable for filing.

9. Accordingly, IT IS HEREBY ORDERED, that the Application for Review filed by Cellular of NW Ohio, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] The *MO&O* resolved only those allegations made in a petition to deny filed by Continental Investment Corporation. In its petition for reconsideration, CNWO requested that the MSD reconsider the *MO&O* in light of arguments made in its petition to deny, which the MSD did not address in the *MO&O* because it did not have a copy of CNWO's petition to deny. The *Order* denied CNWO's petition to deny and affirmed the *MO&O*.

[2] CNWO also argued that Roper failed to obtain a firm financial commitment. The MSD specifically found that Roper is financially qualified. *Order* at 4458. CNWO does not challenge this finding in its Application for Review.

[3] Further, in *Jacksonville* we concluded that the Common Carrier Bureau had not exceeded the scope of its delegated authority in the *Johnstown Cellular* decision. We stated that the "Bureau had authority to interpret the 'letter perfect' standard and resolve the case before it based on the Commission order adopting that standard." *Jacksonville*, 3 FCC Rcd at 5387 at n.2. *See also* Section 0.291(a)(1) of our Rules. Accordingly, we reject CNWO's arguments concerning the scope of the Common Carrier Bureau's authority to explain and interpret the "letter perfect" standard.

[4] Before that decision, applications were only dismissed as unacceptable for filing, pursuant to Section 22.20 of our Rules, when the application was so deficient in its informational showings that we were unable to process the application.

[5] *Public Notice*, Report No. CL-86-57, released January 21, 1986.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

RKO GENERAL, INC. (WOR) New York, New York — **MM DOCKET NO. 84-1122** File No. BR-177

For Renewal of License

MAGNA MEDIA CORPORATION New York, New York — **MM DOCKET NOS. 84-1123 to 84-1124, 84-1126, 84-1128, 84-1132 to 84-1133**

et al.

For Construction Permit for a new AM Station

RKO GENERAL, INC. (WRKS-FM) New York, New York — **MM DOCKET NO. 84-1134** File No. BRH-14

For Renewal of License

MAGNA MEDIA CORPORATION New York, New York — **MM DOCKET NOS. 84-1135, 84-1138 to 84-1140, 84-1146**

et al.

For Construction Permit for a new FM Station

S/G COMMUNICATIONS
Assignor

and — File No. BALH-881212GI

SUMMIT-NEW YORK BROADCASTING CORPORATION

For Consent to Assignment of License for WRKS-FM

and Related Application — File No. BLH-881212KC

MEMORANDUM OPINION AND ORDER

Adopted: May 4, 1989; Released: May 17, 1989

By the Commission: Commissioner Dennis dissenting and issuing a statement.

1. Before the Commission are: (1) Joint Petition for Approval of Settlement Agreement and Related Relief filed December 12, 1988 and amended April 26, 1989 by RKO General, Inc., Magna Media Corporation, South Jersey Radio, Inc., S/G Communications, COZZIN Communications Corporation, People Broadcasting Corporation, and Summit-New York Broadcasting Corporation; (2) a Petition for Leave to Amend filed December 12, 1988 by S/G; (3) Comments filed January 26, 1989 and April 14, 1989 by the Mass Media Bureau; (4) Petition of Women Owning Radio, Inc. to Deny [the Joint Petition] or Designate for Hearing filed January 27, 1989, and Motion for Leave to File Supplement and Supplement to Petition of Women Owning Radio, Inc. to Deny or Designate for Hearing filed February 3, 1989; (6) Joint Opposition to Petition of Women Owning Radio, Inc. to Deny or Designate for Hearing filed February 16, 1989 by RKO, S/G, People, South Jersey, COZZIN, and Summit, and oppositions filed February 16, 1989 individually by COZZIN, Magna, South Jersey, and People; (7) Women Owning Radio, Inc.: Consolidated Reply to Consolidated Opposition to Petition to Deny or Designate for Hearing filed March 8, 1989; and (8) Withdrawal of Petition of Women Owning Radio, Inc. to Deny or Designate for Hearing filed April 18, 1989.

I. JOINT PETITION FOR APPROVAL OF SETTLEMENT AGREEMENT

2. This consolidated comparative renewal proceeding involves RKO's applications for renewal of stations WOR and WRKS-FM in New York City. S/G, Magna, People, COZZIN, and South Jersey have filed mutually exclusive applications for both the AM and FM facilities. (More precisely, in the case of People, Freedom Broadcasting Corporation, a co-owned entity, filed for the AM facility.) Women is an applicant for the AM facility only. In their Joint Petition, the parties who filed FM applications propose to settle the portion of this comparative renewal proceeding involving WRKS-FM. The main features of the proposed settlement are: (1) RKO's renewal application for station WRKS-FM would be dismissed; (2) the mutually exclusive applications of Magna, South Jersey, COZZIN, and People would be dismissed; (3) S/G's mutually exclusive application for WRKS-FM would be granted; (4) S/G would assign the license for WRKS-FM to Summit; and (5) Summit would acquire the physical and other assets of WRKS-FM from RKO. Under the agreement Summit would pay RKO $32,500,000 and would pay the other applicants $17,500,000.[1]

3. The parties to the settlement contend that its approval would serve the public interest by avoiding further burdensome litigation in this case and by helping to resolve the protracted and complex set of interrelated proceedings originally involving 14 RKO-owned stations, including WRKS-FM. RKO's basic and comparative qualifications have been at issue in this series of proceedings for more than 23 years.[2] The parties also contend that approval of the agreement will put WRKS-FM into the

hands of an unarguably qualified licensee that would not suffer the same uncertainties as to its future as RKO does. The parties have submitted affidavits stating that they filed their applications in good faith and not for the purpose of reaching or carrying out a settlement agreement. The Bureau interposed no objections to approval of the settlement.

II. PETITION TO DENY

4. As noted above, Women has recently withdrawn its petition to deny. This action appears related to the fact that Women has now entered into a settlement involving WOR. However, under established policy, we examine the merits of petitions to deny, even if they are withdrawn, to determine whether they raise public interest questions. *Booth American Co.*, 58 FCC 2d 553, 554 ¶ 5 (1976). In its petition, Women alleges that a substantial question exists as to whether the applications of COZZIN, South Jersey, and People were filed for the purpose of reaching a settlement agreement. If this is so, 47 U.S.C. § 311(d)(3) would prohibit approval of the agreement. Women points out that these applicants each have relatively weak comparative qualifications. People and South Jersey have outside media interests giving rise to a significant demerit for diversification of media ownership. South Jersey and COZZIN propose relatively little integration of ownership into management. Additionally, both South Jersey and COZZIN filed indiscriminately against all 13 RKO-owned stations. Women contends that these applicants must have anticipated that there would be numerous better qualified applicants and that they filed with the expectation of receiving a settlement payoff from the more qualified applicants. In this regard, Women observes that, pursuant to settlements already approved or proposed, People would receive nearly $3 million, COZZIN would receive nearly $6 million, and South Jersey would receive nearly $9 million. In Women's view, given these circumstances, the Commission should at least initiate further inquiry to determine whether these applications are frivolous and constitute an abuse of process.

5. Women also disputes that approval of a settlement covering the FM facility alone would serve the public interest. (This could become moot in view of the fact that a settlement has now been reached with respect to the AM station. Nevertheless, pending our consideration of the proposed AM settlement, we will address the merits of Women's argument.) Because the comparative qualifications of all of the FM applicants would still have to be considered in the AM proceeding (as would the question of renewal expectancy if RKO is found qualified to be a Commission licensee), Women maintains that approval of the settlement would not conserve administrative resources. Additionally, Women notes that approval of the partial settlement would not remove RKO from the New York market completely. According to Women, the Commission has stated that it would approve settlements only if RKO would withdraw from the affected market completely and all competing applicants in the market agree to settle. Women argues that the Commission should not permit the settling parties to be enriched in the absence of public interest benefits.

6. Women suggests (in the event that the settlement is not rejected on the ground that some of the parties filed their applications for the purpose of reaching the settlement) that the Commission could approve the settlement if: (a) the settling FM applicants also agreed to dismiss their AM applications or (b) the Commission first resolved the merits of the AM contest. At Women's behest, the Commission recently ordered that review of the partial initial decisions in the various RKO comparative proceedings should proceed expeditiously. *RKO General, Inc. (WHBQ - TV)*, FCC 89-5 (Feb. 14, 1989).

III. DISCUSSION

7. We reject Women's arguments and approve the settlement agreement. (Because we substantially agree with the points made in the various oppositions to Women's petition, we will not set them forth separately in detail.)[3] We agree with Women's opponents that Women has not made a prima facie showing that People, COZZIN, and South Jersey filed their applications for the purpose of reaching a settlement agreement. The mere fact that an applicant's qualifications may prove to be inferior does not in itself establish that the applicant lacked good faith in filing its application or that it was filed for an improper purpose. Cf. *Radio Carrollton*, 69 FCC 2d 1139, 1150-52 ¶¶ 25-26 (1978), recon. denied, 72 FCC 2d 264 (1979) (improper motivation in filing petition to deny will not be inferred absent a specific showing). In this regard, we approve a pertinent observation made by the Review Board in *105. 3, Ltd.*, 3 FCC Rcd 5964, 5965 n.1 (Rev. Bd. 1988). As the Board suggests, an apparently inferior applicant nonetheless has the right to prosecute its application and to challenge the other applicants' claimed superiority on basic or comparative grounds.

8. In this case, People, COZZIN, and South Jersey have all actively prosecuted their applications throughout these proceedings. In the Fort Lauderdale proceeding, an ALJ found that South Jersey was the winning applicant after determining that the other applicants were disqualified. *RKO General, Inc. (WAXY - FM)*, 2 FCC Rcd 3348 (I.D. 1987). In other proceedings, the parties have advanced arguments that colorably support the merit of their cases. Moreover, the present settlement agreement and others in which South Jersey and COZZIN participated were not arrived at until after the Commission actively encouraged settlement efforts in September 1986. *RKO General, Inc. (KHJ - TV)*, 60 RR 2d 1694 (1986). Thus, we have no prima facie basis for finding that the applications were filed in bad faith or for the purpose of reaching these settlements.

9. As to the public interest, we have fully considered and approved a settlement agreement involving RKO similar to the instant one in the KHJ-TV, Los Angeles, California proceeding (Docket Nos. 16679-80). *RKO General, Inc. (KHJ - TV)*, 3 FCC Rcd 5057 (1988). We there concluded that strong public interest considerations favor settling what has become one of the most protracted and burdensome proceedings in the Commission's history. Although -- as Women points out -- the settlement agreement now before us differs in some respects from that approved in Los Angeles, we do not believe -- for the reasons which follow -- that the differences are significant from a public interest standpoint.

10. We continue to believe that the public interest is better served in this case by ending the uniquely protracted RKO litigation -- which threatens to continue for many years to come -- so that RKO can withdraw as a licensee and an unquestionably qualified licensee, able to devote its full resources to broadcasting, can take over the

ownership of the station and operate it without a cloud of uncertainty hanging over its head. We thus adhere to the view that only by approving properly structured settlements, such as this one, on an individual basis, can we hope to achieve the public interest benefits inherent in an expeditious resolution of the RKO proceedings.

11. Previously, in elaborating on what we meant by a "properly structured" settlement, we spoke of settlements in which RKO "will withdraw from broadcasting in the market involved . . . ." 3 FCC Rcd at 5060 ¶ 21. Upon reflection, we realize that we imprecisely characterized our intentions. In making the quoted observation, we focused on the particular service concerned in the Los Angeles settlement then before us (there TV). We did not take into account RKO's two Los Angeles radio stations. To clarify matters, we do not mean to imply, as Women suggests, that we would approve only settlements involving all RKO stations in a particular community. Such an approach would be inconsistent with our *KHJ* decision and would hamper the objective of reducing the number of RKO stations in dispute and spurring further settlements. Similarly, the Commission noted in describing a properly structured settlement that "all parties in the renewal proceeding are in agreement with the settlement." *Id.* In order to eliminate any confusion as to this matter, we mean all of the parties necessary to the particular settlement. It is also true - - as Women notes – that we mentioned conserving administrative resources as a secondary public interest benefit of approving properly structured settlements. *Id.* However, the *primary* benefit of such settlements is that they resolve the uncertainties regarding the ownership of the particular RKO station. The settlement before us would undeniably further that objective even if it remained necessary to adjudicate the proceedings involving the AM station. It would therefore not be fatal even if the settlement did not conserve administrative resources to the same extent as other, previously approved settlements. For these reasons, we do not consider it objectionable that this settlement might not have resolved the AM proceeding. (In any event, approval of a settlement involving only the FM station might nevertheless have conserved administrative resources by making it unnecessary to consider the past performance of the FM station in determining whether RKO were entitled to a renewal expectancy.)

12. Additionally, we note, as before, that approving this settlement will preserve our policy of deterring licensee misconduct. RKO will not receive full compensation for the license. Under the terms of the settlement agreement, RKO will receive only 65 percent of the proceeds of the sale.[4] Further, RKO has already suffered the loss of WNAC-TV in Boston, now worth more than $400 million. And it has received substantially less than full value for six stations sold pursuant to other settlements. In addition, RKO must either withdraw entirely from broadcasting or risk the loss of its remaining stations if the Commission finds it unqualified in Phase I of the KHJ-TV proceeding.

13. Consistent with our disposition of the KHJ-TV agreement, therefore, and for the reasons stated more fully there and which we incorporate herein by reference, we hold that approving the agreement before us will serve the public interest. Similarly, we find that the agreement complies with 47 U.S.C. § 311(d) and 47 C.F.R. § 73.3525. We note, moreover, that in a pleading filed April 14, 1989, the Bureau states that it has reviewed the assignment application and finds that the proposed assignee is qualified.

14. ACCORDINGLY, IT IS ORDERED, That, good cause having been shown, the Petition for Leave to Amend filed December 12, 1988 by S/G Communications IS GRANTED and the associated amendment IS ACCEPTED. This amendment reports minor changes in S/G's ownership.

15. IT IS FURTHER ORDERED, That good cause having been shown, the motion for Leave to File Supplement filed February 3, 1989 by Women Owning Radio, Inc. IS GRANTED and that the Petition of Women Owning Radio, Inc. to Deny or Designate for Hearing filed January 27, 1989 and supplemented February 3, 1989 IS DISMISSED as requested.

16. IT IS FURTHER ORDERED, That the Joint Petition for Approval of Settlement Agreement and Related Relief filed December 12, 1988 and amended April 26, 1989 IS GRANTED and the associated Agreements ARE APPROVED.[5]

17. IT IS FURTHER ORDERED, That the following applications for renewal of license and for construction permits ARE DISMISSED with prejudice: RKO General, Inc. (File No. BRH-14), Magna Media Corporation (File No. BPH-830427AB), South Jersey Radio, Inc. (File No. BPH-830512AH), COZZIN Communications Corporation (File No. BPH-830512BB), and People Broadcasting Corporation (File No. BPH-830512BY); and that the applications of S/G Communications (File Nos. BPH-830512AN, BLH-881212KC) for construction permit and for license to cover the construction permit ARE GRANTED; and that the application for assignment of WRKS-FM to Summit-New York Broadcasting Corporation (File No. BALH-881212GI) IS GRANTED.

18. IT IS FURTHER ORDERED, That MM Docket Nos. 84-1134 to 84-1135, 84-1138 to 84-1140, and 84-1146 (involving applications for WRKS-FM) ARE SEVERED from this consolidated proceeding and ARE TERMINATED, and that the Partial Initial Decision dealing with the qualifications of the various applicants for a construction permit (*RKO General, Inc. (WOR)*, 3 FCC Rcd 4243 (I.D. 1988)) IS VACATED as moot insofar as it relates to the proceedings with respect to WRKS-FM.[6]

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] The payments to the other applicants would be distributed as follows:

S/G	$6,150,000
Magna (and its stockholders)	$3,500,000
People	$2,850,000
COZZIN	$2,500,000
South Jersey	$2,000,000
Howard L. Green (a South Jersey stockholder)	$500,000

Additionally, S/G paid $150,000 to People's parent corporation pursuant to a separate agreement entered into on November 30, 1988.

[2] A detailed history of these proceedings is set forth in *RKO General, Inc. (KHJ - TV)*, 3 FCC Rcd 5057 (1988).

[3] Women's opponents also assert that Women lacks standing to file its petition to deny and that the petition lacks an essential affidavit by an individual with personal knowledge of the facts alleged. Women, however, is a party to the consolidated AM/FM proceeding and therefore has standing to file pleadings relevant to matters at issue in that proceeding including the settlement. Women's petition relies on matters of record of which official notice may be taken. Thus, no affidavit is necessary. 47 U.S.C. § 309(d)(1).

[4] As in *KHJ - TV*, it is significant to our approval of the agreement that RKO is receiving significantly less than 75 percent of the fair market value of the station.

[5] As they have requested, the parties may consummate the mutually contingent transactions in a single closing. Our action shall be effective with respect to the termination of the parties' hearing rights upon their notifying us of closing under those transactions.

[6] The parties request this relief, and it is customary practice. *See United States v. Munsingwear*, 340 U.S. 36, 39-40 (1950); *Boston Community Media Committee, Minority Caucus v. FCC*, 509 F.2d 516, 517 (D.C. Cir. 1975).

DISSENTING STATEMENT OF COMMISSIONER PATRICIA DIAZ DENNIS

In Re: Joint Petition for Approval of Settlement Agreement and Related Matters in the New York City Radio Comparative Renewal Proceeding (MM Docket Nos. 84-1122 *et al.)*.

I dissent for the reasons stated in my dissent from the KHJ-TV settlement. *RKO General, Inc.*, 3 FCC Rcd 5057, 5067 (1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

SHERBURNE WRIGHT File No. BPLIF-860728DH
EDUCATIONAL TECHNOLOGY
COOPERATIVE
Channels G1, G2, G3, and G4
Buffalo, Minnesota

For License in the
Instructional Television Fixed Service

MEMORANDUM OPINION AND ORDER

Adopted: May 4, 1989; Released: May 17, 1989

By the Commission:

1. The Commission has before it an application for review filed by Twin Cities Schools' Telecommunications Group, Inc. ("Twin Cities"). Twin Cities seeks review of the Mass Media Bureau's July 13, 1987 ruling which granted the above-referenced application of Sherburne Wright Educational Technology Cooperative ("Sherburne Wright") for Instructional Television Fixed Service ("ITFS") channels G1, G2, G3 and G4 in Buffalo, Minnesota, and denied Twin Cities' petition to deny that application.

2. Twin Cities holds an authorization to construct and operate facilities on ITFS channels G1, G2, G3, and G4 in Minneapolis, Minnesota (WHR-487). On July 15, 1986, Twin Cities filed with the Commission a copy of an agreement between it and Instructional Telecommunications Foundation, Inc. ("ITF"), under which Twin Cities would lease to ITF up to 148 hours per week of "excess capacity" air time on each channel.[1] In its petition to deny, Twin Cities asserted that Sherburne Wright's proposed system would cause unacceptable interference to a 15-mile "protected service area" to which Twin Cities alleged it was entitled in light of its lease with ITF.[2] Twin Cities argued that, although ITFS systems "normally" do not have a protected service area, the Commission "recognizes a protected service area when an ITFS entity leases capacity on its system." In support of its argument, Twin Cities cited *Multipoint Distribution Service - First Report and Order in General Docket No. 80-113 ("MDS Technical Standards Order")*, 98 FCC 2d 68, 92 (1984). This assertion is critical to Twin Cities' objective of maximizing the prospective non-ITFS service zone of commonly-controlled ITF because Twin Cities' most distant receive site is only 9.8 miles from its transmitter, and, in *Instructional Television Fixed Service - Second Report and Order in MM Docket No. 83-523 ("ITFS Second Report and Order")*, 101 FCC 2d 49, 96-97 (1985), the Commission established an interference protection plan for ITFS under which protection would be afforded solely to specified, authorized ITFS receive sites.

3. In denying Twin Cities' petition to deny, the Bureau stated that, although the Commission had "consider[ed] the concept of a protected service area for ITFS facilities" in *Instructional TV Fixed Service - Further Notice of Proposed Rule Making in MM Docket No. 83-523 ("ITFS FNPRM")*, 98 FCC 2d 1249, 1267 (1984), the proposal was ultimately rejected in *ITFS Second Report and Order*, *supra* at 96-97. The Bureau rejected Twin Cities' argument that *MDS Technical Standards Order*, *supra*, established a 15-mile protected service area for non-ITFS use of ITFS channels.

4. In its application for review, Twin Cities repeats its argument that *MDS Technical Standards Order*, *supra*, "established a protected service area for ITFS systems leased or used for non-ITFS purposes." Twin Cities further argues that *ITFS Second Report and Order*, *supra*, "merely confirmed the interference standards that would govern ITFS stations during periods of ITFS operation, and did not address or affect the interference standards for non-ITFS use."

5. *Background.* The rules governing ITFS operations are contained in Part 74 of the Commission's Rules, 47 C.F.R. Part 74. ITFS was created in *Educational Television (Report and Order in Docket No. 14744)*, 39 FCC 846 (1963), *recon. denied*, 39 FCC 873 (1964). In that Order, the Commission stated that the purpose of ITFS was to transmit "instructional material to selected receiving locations in accredited public and private schools, colleges and universities for the formal education of students . . . and to perform other related services directly concerned with formal or informal instruction and training." *Id.* at 853. The primary purpose of the service remains the same today. *See* Section 74.931 of the Commission's Rules, 47 C.F.R. §74.931. In *Report and Order in General Docket No. 80-112 ("Report and Order (80-112)")*, 94 FCC 2d 1203, (1983), *recon. denied ("80-112 Recon.")*, 98 FCC 2d 129 (1984), the Commission adopted rules under which ITFS licensees could lease or use "excess capacity" on their systems "for a variety of non-ITFS purposes." Two basic reasons were given for allowing non-ITFS use of "excess capacity": it would generate revenue necessary for the growth and success of ITFS, and it would result in a broader, more efficient use of the spectrum reserved for ITFS. *Id.* at 1250. *See also ITFS Second Report and Order*, *supra*, *Memorandum Opinion and Order on Reconsideration* ("*ITFS Recon.*"), 59 RR 2d 1355 (1986), *aff'd* 1 FCC Rcd 24 (1986). However, in allowing non-ITFS use of "excess capacity" on ITFS channels, the Commission specified that "the stated [educational] purposes of ITFS must continue to be the paramount concern of any ITFS licensee." *80-112 Recon.*, *supra* at 137. *See also ITFS Second Report and Order*, *supra* at 85.

6. The rules governing MDS operations are contained in Part 21, Subpart K of the Commission's Rules, 47 C.F.R. Part 21, Subpart K. MDS was created in *Multipoint Distribution Service (Report and Order in Docket No. 19493)* ("*MDS*"), 45 FCC 2d 616 (1974). Section 21.2 of the Commission's Rules, 47 C.F.R. §21.2, defines MDS as "[a] one-way domestic public radio service rendered on microwave frequencies from a fixed station transmitting (usually in an omnidirectional pattern) to multiple receiving facilities located at fixed points determined by the subscribers." MDS programming "may consist of private television, high speed computer data, facsimile, control information, or other communications capable of radio transmission." *MDS*, *supra* at 617. However, "[t]he major-

ity of the transmission time now leased by MDS common carrier licensees is used by their customers to transmit premium television . . . to hotels, motels, apartment complexes and single family residences . . . . The term premium television refers to television entertainment programming for which the viewer pays a fee and that is not supported by advertising revenues." *Report and Order (80-112), supra* at 1207.

7. The *MDS Technical Standards Order* was part of General Docket No. 80-113, a proceeding which was directed primarily at MDS, although it touched tangentially on ITFS because the Commission had requested "comments on the feasibility of applying the proposed new [MDS] technical rules to all services sharing the band." *Id.* at 71. *See Notice of Inquiry and Notice of Proposed Rule Making in General Docket No. 80-113*, FCC 80-137, 45 Fed. Reg. 29350, 29358 (1980). Concerning operations on the frequencies allocated for MDS, the *MDS Technical Standards Order, supra* at 87, stated that "[t]he concept of a protected service area has always been implicit in the MDS rules." "[V]irtually all" of the members of the MDS community who filed comments in that proceeding "agreed that there was a need to have a clearly defined protected service area." *Id.* at 91. Various MDS commenters urged that the protected service area boundary for MDS operations should extend 30 miles or more from the MDS transmitter site. *Id.* at 102-03. After considering such factors as the nature of MDS operations, *Id.* at 91-92, minimally acceptable picture quality, signal availability and propagation, equipment considerations, and power flux density levels, *Id.* at 94-106, the Commission rejected MDS commenters' suggestions of a protected service area boundary of 30 miles or more, and adopted a rule establishing a protected service area for omnidirectional MDS operations which extends fifteen (15) miles from the transmitter site. *Id.* at 106-07. *See* Section 21.902(d) of the Commission's rules, 47 C.F.R. §21.902(d).

8. In contrast, all ITFS commenters in the *MDS Technical Standards Order* proceeding urged that a service area interference protection scheme would be inappropriate for ITFS. In support, many ITFS commenters "cited examples of receiver sites that were located well beyond the proposed [15-mile] protected service area boundary." *Id.* at 91. The Commission agreed, stating that "the nature of a typical ITFS operation is different from the typical MDS operation in that an ITFS operator frequently must provide service to certain sites regardless of the engineering difficulties involved whereas an MDS operator will rarely make extraordinary efforts to reach difficult or remote locations." *Id.* at 92. Primarily because of this factor, the Commission determined that it would be inappropriate to establish MDS-like service area interference protection boundaries for ITFS, and that the public interest would best be served by "continu[ing] to allow ITFS operators to engineer their facilities to serve all sites they have traditionally served regardless of location and to protect all such locations." *Id.*

9. Shortly after the *MDS Technical Standards Order* was released, the Commission issued a further notice of proposed Rule Making in a separate proceeding, MM Docket No. 83-523, *ITFS FNPRM, supra*. This proceeding was directed specifically at establishing policies and rules for ITFS, including technical and interference protection standards. A specific proposal to establish a service area protection scheme for ITFS again generated significant opposition from the ITFS community. *ITFS Second Report and Order, supra* at 96. As a result of the comments, the Commission rejected the service area protection scheme because it was fundamentally incompatible with the specific purpose and unique needs of ITFS. *ITFS Second Report and Order, supra* at 97. Instead, the Commission determined to afford protection from harmful interference to all authorized ITFS receive sites regardless of the distance from the licensee's transmitter. *Id.* at 96-97. There were two primary reasons for the Commission's rejection of an ITFS service area protection scheme. First, many ITFS licensees must serve receive sites at distances greater than 15 miles, and a 15-mile protected sevice area would fail to provide needed interference protection to these sites. Second, many other ITFS licensees' receive sites are clustered close to their transmitters. In these situations, a 15-mile service area would create vast protected areas which were not actually served by ITFS, thereby precluding possible spectrum reuse in nearby communities. *ITFS Recon., supra* at 1380.

10. *Discussion.* Twin Cities' pleadings misconstrue the scope and intent of the "service area" discussion contained in *MDS Technical Standards Order*. That *Order, supra* at 92, did state that during the hours ITFS channels are used for non-ITFS purposes "the service area should be the same MDS service area." This statement, upon which Twin Cities rests its entire argument, might be confusing when read in isolation. However, when read in context, and in light of the Commission's subsequent actions, it is clear that Twin Cities relies upon an incorrect reading of this language.

11. As discussed above, the *MDS Technical Standards Order* established by rule a 15-mile protected service area boundary for MDS, but, because the specific purpose and unique needs of ITFS would render such an interference protection scheme inappropriate, stated that specified ITFS receive sites should continue to receive interference protection at substantially greater distances, *e.g.*, 30-40 miles. It was in the wake of this discussion distinguishing the longer-range interference protection needs of ITFS licensees from those of MDS licensees, and in the wake of its explicit rejection of a 30-mile service protection area for MDS facilities, that the Commission turned to consider non-ITFS uses of ITFS stations. The Commission believed that ITFS lessees would likely "be offering services that are similar to those offered on MDS facilities." *Id.* Thus, the primary factor which required an extended receive site protection scheme for ITFS, *i.e.*, the necessity to serve distant receive sites, was not present for leased non-ITFS uses. *Id.* When the Commission stated that "during the hours ITFS facilities are being leased or used by the licensee for non ITFS purposes the service area should be the same MDS service area", *Id.* , it was not establishing a separate 15-mile protected service area for leased non-ITFS uses. Rather, it was notifying ITFS lessees and licensees that providers of non-ITFS services on ITFS facilities should not anticipate the distant interference protection, as much as 30-40 miles, which specified ITFS receive sites would be afforded. The statement merely expressed the Commission's expectation that the areas of coverage and service would not vary greatly between MDS operations and MDS-type services offered by lessees of ITFS excess capacity, and was intended simply to reflect the extent of non-ITFS service which licensees *or* lessees should generally expect to provide. The ITFS scheme of limiting interference protection to discrete ITFS receive

sites was not being changed or supplemented. Non-ITFS uses of ITFS channels were to receive only that interference protection which is incidental to the protection afforded to specified ITFS receive sites.

12. This interpretation is supported by a number of other considerations as well. First, as stated above, the concept of a service area interference protection scheme for ITFS was rejected in the *MDS Technical Standards Order* and the subsequent, comprehensive *ITFS Second Report and Order* because it was fundamentally incompatible with the specific purpose and unique needs of ITFS. In the *ITFS Second Report and Order, supra,* one of the primary reasons for the rejection of a 15-mile protected service area for ITFS was because many ITFS licensees' receive sites are clustered close to their transmitters, and a 15-mile protected service area would create vast protected areas not acutally served by ITFS, thereby precluding additional ITFS service in nearby communities. Twin Cities contentions in this case would preclude the ITFS service proposed by Sherburne Wright. Thus, Twin Cities apparently argues that, although the Commission rejected a service area protection scheme for ITFS uses of ITFS facilities specifically in order to avoid precluding additional ITFS service in nearby communities, it created a service area protection scheme for non-ITFS uses of ITFS facilities which would allow such preclusion. This is simply an unreasonable conclusion. The Commission clearly did not intend that the non-ITFS programming to be presented by licensees or lessees of excess capacity should impede the maximization of ITFS service.[3]

13. Further, immediately following the single statement upon which Twin Cities relies, the Commission specifically "stress[ed] that it is the licensee that i[s] protected from harmful interference[,] not the lessee." *Id.* at 92-93. Both the *MDS Technical Standards Order, supra* at 92, and the *ITFS Second Report and Order, supra* at 96-97, provide that ITFS licensees are afforded interference protection only to specified ITFS receive sites that are appropriate to the educational/instructional purpose of ITFS. Finally, nowhere in its *ITFS Orders,* or in its *MDS Technical Standards Order,* did the Commission adopt rules establishing separate interference protection for non-ITFS use of ITFS channels. This is a significant omission. Twin Cities "presum[es]" that the Commission "essentially incorporated by reference" the MDS interference protection standards of Section 21.902 of the Commission's Rules, 47 C.F.R. §21.902, implemented by the *MDS Technical Standards Order, supra.* However, this presumption is without merit. If the Commission had intended to incorporate by reference these standards into the rules adopted for ITFS, it would have done so explicitly, not by implication.[4]

14. Given the absence of any rule affording the interference protection Twin Cities asserts, and the broad potential incompatibility of any such scheme with the more extensive and concentrated use of available ITFS channels for primary ITFS purposes, it is clear that Twin Cities errs in arguing that *MDS Technical Standards Order, supra,* established a 15-mile interference protection area for non-ITFS use of ITFS channels.

15. In view of the foregoing discussion, the application for review filed by Twin Cities Schools' Telecommunications Group, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Twin Cities and ITF are commonly controlled. ITF, in its own name, is the licensee of, or applicant for, ITFS facilities in a number of communities throughout the country.

[2] Twin Cities also alleged that Sherburne Wright's proposed operation would cause objectionable interference to one of its ITFS receive sites, and that four of Sherburne Wright's proposed receive sites would suffer interference from Twin Cities' authorized operation. In opposition, Sherburne Wright reiterated its previous offer to upgrade Twin Cities' receive site antenna, if necessary, to reduce interference to acceptable levels, and otherwise rebutted the engineering claims made by Twin Cities. The Commission's own analysis confirmed that of Sherburne Wright. Twin Cities does not seek review of these conclusions.

[3] Moreover, the "part-time" nature of the non-ITFS service would not avoid this preclusive effect because it could not really be "part-time." As illustrated by Twin Cities' arguments in this case, its non-ITFS protected service area would remain "protected" even during the time that its ITFS channels were being used for ITFS purposes.

[4] When the Commission discussed the interference protection to be afforded to ITFS in the *ITFS Second Report and Order, supra* at 96, it specifically noted that a service area interference protection scheme had been established for MDS stations in the *MDS Technical Standards Order, supra,* and described that MDS service area protection scheme in detail. Had the *MDS Technical Standards Order* also established part-time service area protection for non-ITFS uses of ITFS channels, or incorporated by reference the MDS interference standards into the ITFS rules, the Commission would have so stated at that point in the *ITFS Second Report and Order.*

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-352

In re Application of

WCVQ, INC.	File No. BPCT-871224KG
NICHOLS BROADCASTING CORPORATION	File No. BPCT-880301KF
MAPLE LEAF BROADCASTING LIMITED PARTNERSHIP	File No. BPCT-880301KG
LAKE CHAMPLAIN COMMUNICATIONS, INC.	File No. BPCT-880301KH
BURLINGTON CHANNEL 44, INC.	File No. BPCT-880301KI
BURLINGTON 44 COMPANY	File No. BPCT-880301KL
DAVID McMEEKIN	File No. BPCT-880301KM

For Construction Permit for a New Television Station on Channel 44, Burlington, Vermont

MEMORANDUM OPINION AND ORDER

Adopted: May 4, 1989; Released: May 17, 1989

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

1. The Review Board has under consideration an appeal filed March 31, 1989 by WCVQ, Inc. (WCVQ), from Administrative Law Judge (ALJ) Edward Luton's *Memorandum Opinion and Order*, FCC 89M-965, released March 24, 1989, which memorialized his bench ruling of February 9, 1989, (Tr. 483) and authorized the instant appeal, pursuant to Section 1.301(b), 47 CFR § 1.301(b). The ruling in question denied WCVQ the right to produce a witness concerning whether a principal of a competing applicant (Nichols Broadcasting Corporation (Nichols)), here seeking integration credit, actually effectuated an integration pledge advanced in a previous comparative proceeding[1] which was ultimately resolved by a settlement agreement. In arriving at his ruling, the ALJ considered the proposed witness testimony irrelevant because the earlier integration pledge had not been a basis for decision of the case.[2] Permission to appeal the ruling was allowed, however, to elicit the Board's views on whether *Utah Television Associates Limited Partnership*, 102 FCC 2d 1470 (Rev. Bd. 1985), relied on by WCVQ, continues to be a correct statement of law. That case disallowed integration credit to an applicant where one of its principals failed to effectuate a previous integration commitment, claiming changed circumstances due to a settlement of the case. WCVQ urges in its appeal that we overturn the ALJ's ruling.[3]

2. We will deny the appeal. The ALJ was correct that the holding in *Utah Television Associates Limited Partnership* no longer reflects current Commission policy. *See Mark L. Wodlinger*, FCC 89I-04, released January 10, 1989 (*unpublished)* ("[b]y virtue of the parties' settlement agreement, this is no longer a comparative proceeding, and thus [the applicant and principals] are not bound by their integration and diversification pledges"). At the time *Utah Television* was decided, the case was controlled by *Alexander S. Klein, Jr.*, 88 FCC 2d 583 (1981), where the Commission denied a post- *Decision* request to delete a divestiture condition it had previously placed on the grant of a construction permit application, notwithstanding that the deletion was a significant factor in an agreement to end litigation reached among the parties. The Commission reasoned that the imposition of the divestiture requirement had been intimately linked with the rationale for its *Decision*, and that its subsequent deletion would undermine the basis of the case and deprive the public of the comparative evaluation occasioning the divestiture requirement. 88 FCC 2d at 586. *See also Houston Family Television, Ltd.*, 101 FCC 2d 661, 671 (Rev. Bd. 1985) ("settlement of a case does not allow the successful applicant to casually abandon its comparative representations, even when the competing applicants consent to the abandonment"). As we read *Mark Wodlinger*, material representations made by applicants to secure a comparative advantage may be disregarded entirely if the case settles.

3. Earlier in *Ruarch Associates*, FCC 86-130, released March 28, 1986, *(unpublished)* the Commission revised its policy and granted a post- *Decision* joint request for approval of settlement agreement that sought the deletion of a divestiture condition placed on the grant.[4] In so doing, the Commission specifically overruled *Klein*, noting that its previous concerns appeared to have been largely misplaced. It weighed heavily the fact that there was no evidence that the applicant in *Ruarch* intended to avoid its commitment to divest itself of a low power television station if it obtained a grant; and, absent such evidence, an unconditional grant pursuant to a settlement agreement did not jeopardize the integrity of the Commission's adjudicatory process. The Commission concluded (at para. 5):

> Unless it appears that the applicant never intended to honor its divestiture commitment, the public interest is better served by approving the settlement agreement, making a grant without [the] divestiture condition to a fully qualified applicant and terminating the proceeding than by insisting that a condition imposed in the context of a comparative proceeding remain intact even though the parties have entered into a settlement agreement.

Finally, as noted above, in *Mark L. Wodlinger*, the Commission explicitly stated that neither principals nor applicants will be bound by their integration pledges where the proceeding is terminated pursuant to a settlement agreement.[5]

4. ACCORDINGLY, IT IS ORDERED, That the Appeal From Presiding Officer's Interlocutory Ruling, filed March 31, 1989 by WCVQ, Inc. IS DENIED; and that the Motion to Strike, filed April 11, 1989 by WCVQ, Inc. IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

FOOTNOTES

[1] South Burlington, Vermont; BC Docket 81-295.

[2] By a supplement to its opposition to the appeal, Nichols attaches for the Board's information a copy of a *Memorandum Opinion and Order* (FCC 89M-1264, released April 24, 1989), in which the ALJ denied a motion to enlarge issues filed by WCVQ seeking a misrepresentation issue based on testimony adduced by Nichols that the integration pledge had been honored. That ruling is not before us.

[3] Other pleadings include an opposition filed by Nichols on April 4, 1989; a motion to strike certain representations contained in Nichols' opposition, filed by WCVQ on April 11, 1989; an opposition to the motion to strike, filed by Nichols April 12, 1989; and a supplement to its opposition to the appeal, filed by Nichols on April 25, 1989. The subject matter raised by the motion to strike is not relevant to our resolution of the appeal and will be summarily dismissed.

[4] With all due respect, the Board believes that the policy change that permits applicants to abandon or ignore comparative representations in the case of settlement contributes to the abuse of the comparative process just addressed in *Revision of Application for Construction Permit for Commercial Broadcast Station (Form 301)*, Gen. Dkt. Nos. 88-328, 81-742, FCC 89-110, released April 20, 1989. We believe that the gamesmanship facilitated by these two unpublished orders (*Wodlinger and Ruarch)* is inconsistent with the Commission's latest thinking on the comparative process, and we respectfully suggest reconsideration so as to harmonize the Commission's recent concern for disingenuous applicant representations with *Wodlinger and Ruarch*. While the terms of a specific settlement agreement may *necessitate* a change in licensee structure (as when, *e.g.*, a merger occurs), the Commission might wish to consider the benefits of requiring applicants to honor their commitments of record in all other circumstances.

[5] Because appellant has not raised the issue, we need not decide whether it is bound by the unpublished decisions in *Ruarch and Wodlinger*. *See* 5 U.S.C. § 552 (a)(2). Suffice it to note, however, that the Board, as a subordinate agency unit, considers itself bound by those two rulings rendered pursuant to delegated staff authority.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-49

In re Applications of

Grant Cotton *et al.*, d/b/a COTTON BROADCASTING COMPANY — File No. BPCT-841004KF

THE L BROADCASTING COMPANY — File No. BPCT-841005KR

For Construction Permit for New Television Station at Raleigh, North Carolina

ORDER

Adopted: May 8, 1989; Released: May 8, 1989

1. In a Decision, 104 FCC 2d 473 (1986), the Review Board granted Cotton Broadcasting Company's application. In a Memorandum Opinion and Order, FCC 89-46 (Feb. 23, 1989), the Commission authorized The L Broadcasting Company (LBC) to amend its application and it authorized the filing of comments by the applicants. Now before the Commission for consideration is a Joint Petition for Approval of Agreement, and a Settlement Agreement, filed April 21, 1989 by Cotton and LBC.

2. The Joint Petition seeks approval of the settlement agreement, the grant of Cotton's application, and the dismissal of LBC's application. In consideration therefor, Cotton will pay LBC $20,000.

3. The Joint Petition fully complies with the provisions of 47 U.S.C. § 311(c) and 47 C.F.R. § 73.3525(a) that govern settlement agreements. Attached to the Joint Petition is a copy of the Settlement Agreement, and Cotton and LBC have certified that their applications were not filed for the purpose of reaching or carrying out a settlement agreement. The agreement will serve the public interest by expediting the institution of a new television service in Raleigh, North Carolina.

4. ACCORDINGLY, IT IS ORDERED, That pursuant to authority delegated under 47 C.F.R. § 0.251(f)(11) the Joint Petition for Approval of Agreement filed April 21, 1989 by Cotton Broadcasting Company and The L Broadcasting Company IS GRANTED; the attached Settlement Agreement IS APPROVED; the application filed by Cotton Broadcasting Company (File No. BPCT-841004KF) IS GRANTED; and the application filed by The L Broadcasting Company (File No. BPCT-841005KR) IS DISMISSED.

5. IT IS FURTHER ORDERED, That this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Diane S. Killory
General Counsel

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

RKO GENERAL, INC. (WOR)
New York, New York

MM DOCKET NO. 84-1122
File No. BR-177

For Renewal of License

MAGNA MEDIA CORPORATION
New York, New York

et al.

MM DOCKET NOS. 84-1123 to 84-1124, 84-1126, 84-1128, 84-1132 to 84-1133

For Construction Permit
for a new AM Station

RKO GENERAL, INC. (WRKS-FM)
New York, New York

MM DOCKET NO. 84-1134
File No. BRH-14

For Renewal of License

MAGNA MEDIA CORPORATION
New York, New York

et al.

MM DOCKET NOS. 84-1135, 84-1138 to 84-1140, 84-1146

For Construction Permit
for a new FM Station

ORDER

Adopted: May 4, 1989; **Released: May 17, 1989**

By the Commission: Commissioner Dennis concurring and issuing a statement.

1. Before the Commission is a Joint Motion to Hold Proceeding in Abeyance filed April 21, 1989 by RKO General, Inc., Magna Media Corporation, South Jersey Radio, Inc., S/G Communications, COZZIN Communications Corporation, Freedom Broadcasting Corporation, Women Owning Radio, Inc., and Buckley-WOR Broadcasting Corporation.

2. On April 20, 1989, the parties to the comparative renewal proceeding involving station WOR, New York City, submitted a settlement agreement. The agreement calls for the assignment of WOR, now licensed to RKO, to Buckley. The parties request that the Commission hold this proceeding in abeyance pending consideration of the settlement agreement.

3. The parties seek this relief because the Commission recently ordered the Review Board to rule on exceptions to partial initial decisions ranking the qualifications of the competing applicants in this proceeding and other proceedings involving RKO owned stations. *RKO General, Inc. (WHBQ - TV)*, FCC 89-5 (Feb. 14, 1989). If the Commission approves the settlement, further action by the Board in this proceeding would be superfluous.

4. We will grant the requested relief. In an order establishing procedures for the RKO cases, we held that, if we are informed that a settlement agreement has been reached in any of these proceedings, that proceeding would be held in abeyance. *RKO General, Inc. (WHBQ - TV)*, 2 FCC Rcd 1626, 1627-28 ¶ 9 (1987). This approach reflects our intent to resolve these proceedings expeditiously consistent with the public interest and the efficient use of administrative resources.

5. ACCORDINGLY, IT IS ORDERED, That the aforementioned Joint Motion to Hold Proceeding in Abeyance IS GRANTED; that this proceeding IS HELD IN ABEYANCE pending Commission consideration of the proposed settlement; and that the Review Board IS DIRECTED to take no further action on the exceptions filed in this proceeding concerning MM Docket Nos. 84-1122 through 84-1133.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

SEPARATE STATEMENT
OF
COMMISSIONER PATRICIA DIAZ DENNIS

Re: RKO General, Inc. (WOR)
New York, New York

I concur in the result. I would not have approved any settlements until we ruled on RKO's basic qualifications. *See* Dissenting Statement of Commissioner Patricia Diaz Dennis, *RKO General, Inc.*, 3 FCC Rcd 5057, 5067 (1988). Nevertheless, because the majority decided to approve comprehensive settlements for other RKO stations, precedent obliges us to review the settlement agreement in this case. Therefore, I reluctantly agree that we should hold this proceeding in abeyance pending consideration of the settlement agreement.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

RKO GENERAL, INC. (WFYR-FM) Chicago, Illinois — **MM DOCKET NO. 84-1085** File No. BRH-79081A3

For Renewal of License

EAST LAKE COMMUNICATIONS, INC. Chicago, Illinois — **MM DOCKET NOS. 84-1086, 84-1089, 84-1094, 84-1096**

et al.

For Construction Permit
for a new FM Station

EAST LAKE COMMUNICATIONS, INC.
Assignor

and — File No. BALH-890105GJ

SUMMIT-CHICAGO BROADCASTING CORPORATION
Assignee

For Consent to Assignment
of License for WFYR-FM

and Related Application — File No. BLH-890105KB

MEMORANDUM OPINION AND ORDER

Adopted: May 9, 1989; **Released: May 16, 1989**

By the Commission: Commissioner Dennis dissenting and issuing a statement.

1. Before the Commission are: (1) a Joint Petition for Approval of Settlement Agreement and Related Relief filed January 5, 1989 by RKO General, Inc., East Lake Communications, Inc., Windy City Broadcasting, Ltd., COZZIN Communications Corporation, South Jersey Radio, Inc., and Summit-Chicago Broadcasting Corporation; (2) Comments filed January 17, 1989 and April 10, 1989 by the Mass Media Bureau; (3) a letter pleading by Kevin Molloy received February 7, 1989;[1] and (4) a responsive pleading by RKO received March 3, 1989.

2. In their Joint Petition the parties propose to settle this comparative renewal proceeding. The main features of the proposed settlement are: (1) RKO's renewal application for station WFYR-FM would be dismissed; (2) the mutually exclusive applications of Windy City, COZZIN, and South Jersey would be dismissed; (3) East Lake's mutually exclusive application for WFYR-FM would be granted; (4) East Lake would assign the license for WFYR-FM to Summit; and (5) Summit would acquire the physical and other assets of WFYR-FM from RKO. Under the agreement Summit would pay RKO $13,730,100 and would pay the other applicants $7,269,900.[2]

3. The parties contend that their settlement would serve the public interest by avoiding further burdensome litigation in this case and by helping to resolve the protracted and complex set of interrelated proceedings originally involving 14 RKO-owned stations, including WFYR-FM. RKO's basic and comparative qualifications have been at issue in this series of proceedings for more than 23 years.[3] The parties also contend that approval of the agreement will put WFYR-FM into the hands of an unarguably qualified licensee that would not suffer the same uncertainties as to its future as RKO does. The parties have submitted affidavits stating that they filed their applications in good faith and not for the purpose of reaching or carrying out a settlement agreement. The Bureau interposed no objections to approval of the settlement.

4. In his objection, Molloy, a former employee of WFYR-FM, alleges that the station's production director and general manager defamed him by spreading false rumors that he suffers from AIDS. Molloy reports that he has filed suit against the station and the two station officials in a local court. *Molloy v. Radio Station WFYR - FM*, No. 88L1680 (Cir. Ct. Cook Co. Sept. 13, 1988). Molloy further alleges that he was subsequently fired because of these rumors and that he thereupon filed a discrimination complaint with the Illinois Department of Human Rights. RKO and the Bureau oppose Molloy's pleading.

5. Molloy's allegations provide no basis for Commission action. First, allegations of defamation involve non-FCC related conduct not relevant to a licensee's character qualifications. *Character Qualifications*, 102 FCC 2d 1179, 1195 ¶ 34 (1986). Second, the Commission does not bar the transfer of a broadcast station during the pendency of employment discrimination complaints before another forum. *Hudson Horizons, Inc.*, FCC 86-287 (June 19, 1986) at n.1. Moreover, the Commission's EEO rules (which define our concerns in this area) do not apply to discrimination not based on race, color, religion, national origin, or sex. 47 C.F.R. § 73.2080. *See California Ass'n of Physically Handicapped v. FCC*, 721 F.2d 667, 669-70 (9th Cir. 1983), cert. denied, 469 U.S. 832 (1984).

6. Having disposed of these objections, we turn to more general public interest considerations. We have fully considered and approved a settlement agreement similar to the instant one in the KHJ-TV, Los Angeles, California proceeding (Docket Nos. 16679-80). *RKO General, Inc. (KHJ - TV)*, 3 FCC Rcd 5057 (1988). We there concluded that strong public interest considerations favor settling what has become one of the most protracted and burdensome proceedings in the Commission's history. Although the circumstances in this case are not identical to those in the Los Angeles proceeding, we believe that essentially the same public interest considerations govern both proceedings. That is, we continue to believe that the public interest is better served in this case by ending this uniquely protracted litigation -- which threatens to continue for many years to come -- so that RKO can withdraw as a licensee and an unquestionably qualified licensee, able to devote its full resources to broadcasting, can take over the ownership of the stations and operate them without a

cloud of uncertainty hanging over its head. We also note that approving the settlement would preserve our policy of deterring licensee misconduct. RKO would not receive full compensation for the license. Under the terms of the settlement agreement, RKO would receive only 65.4 percent of the proceeds of the sale.[4] Further, RKO has already suffered the loss of WNAC-TV in Boston, now worth more than $400 million. And it has received substantially less than full value for six stations sold pursuant to other settlements. In addition, RKO must either withdraw entirely from broadcasting or risk the loss of its remaining stations if the Commission finds it unqualified in Phase I of the KHJ-TV proceeding. Consistent with our disposition of the KHJ-TV agreement, therefore, and for the reasons stated more fully there and which we incorporate herein by reference, we hold that approving the agreement before us would serve the public interest. Similarly, we find that the agreement complies with 47 U.S.C. § 311(d) and 47 C.F.R. § 73.3525. We note, moreover, that in a pleading filed April 10, 1989, the Bureau states that it has reviewed the assignment application and finds that the proposed assignee is qualified.

7. ACCORDINGLY, IT IS ORDERED, That the letter pleading by Kevin Molloy received February 7, 1989 IS DENIED.

8. IT IS FURTHER ORDERED, That the Joint Petition for Approval of Settlement Agreement and Related Relief filed January 5, 1989 IS GRANTED and the associated Agreements ARE APPROVED.[5]

9. IT IS FURTHER ORDERED, That the following applications for renewal of license and for construction permits ARE DISMISSED with prejudice: RKO General, Inc. (File No. BRH-790801A3), Windy City Broadcasting Ltd. (File No. BPH-830318AA), COZZIN Communications Corporation (File No. BPH-830512BK), and South Jersey Radio, Inc. (File No. BPH-830512CA); and that the applications of East Lake Communications, Inc. (File Nos. BPH-830512AG, BLH-890105KB) for construction permit and for license to cover the construction permit ARE GRANTED; and that the application for assignment of WFYR-FM to Summit-Chicago Broadcasting Company (File No. BALH-890105GJ) IS GRANTED.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED and the Partial Initial Decision dealing with the qualifications of the various applicants for a construction permit *RKO General, Inc.* (*WFYR - FM*), 2 Rcd 2839 (I.D. 1987) IS VACATED as moot.[6]

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Molloy calls his letter pleading a petition to deny. However, the pleading does not conform to the filing or service requirements of the Commission's rules. We therefore treat it as an informal objection. 47 C.F.R. § 73.3587.

[2] The payments to the other applicants would be distributed as follows:

East Lake	$4,500,000
Windy City	$932,000
COZZIN	$846,000
South Jersey	$991,000

[3] A detailed history of these proceedings is set forth in *RKO General, Inc.* (*KHJ - TV*), 3 FCC Rcd 5057 (1988).

[4] As in *KHJ - TV*, it is significant to our approval of the agreement that RKO is receiving significantly less than 75 percent of the fair market value of the station.

[5] As they have requested, the parties may consummate the mutually contingent transactions in a single closing. Our action shall be effective with respect to the termination of the parties' hearing rights upon their notifying us of closing under those transactions.

[6] The parties request this relief, and it is customary practice. *See United States v. Munsingwear*, 340 U.S. 36, 39-40 (1950); *Boston Community Media Committee, Minority Caucus v. FCC*, 509 F.2d 516, 517 (D.C. Cir. 1975).

DISSENTING STATEMENT
OF
COMMISSIONER PATRICIA DIAZ DENNIS

In Re: Joint Petition for Approval of Settlement Agreement and Related Matters in the Chicago, Illinois, Radio Comparative Renewal Proceeding (MM Docket Nos. 84-1085 *et al.*).

I dissent for the reasons stated in my dissent from the KHJ-TV settlement. *RKO General, Inc.*, 3 FCC Rcd 5057, 5067 (1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

PETROLEUM COMMUNICATIONS, INC. File No. 00289-CL-MP-87

To modify its Cellular Geographic Service Area for Station KNKA411 on Frequency Block A in the Domestic Public Cellular Radio Telephone Service for the Gulf of Mexico

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: May 10, 1989; Released: May 18, 1989

By the Chief, Common Carrier Bureau:

BACKGROUND

1. Before us are two Petitions for Reconsideration regarding the Mobile Services Division's *Memorandum Opinion and Order*, 3 FCC Rcd. 399 (1988) ("Order"), granting the captioned application of Petroleum Communications, Inc. ("Petro Com") for expansion of its Cellular Geographic Service Area (CGSA)[1] within the Gulf of Mexico Service Area (GMSA).[2] The Order also addressed several issues connected with cellular service in and adjacent to the Gulf of Mexico; in particular, the Order clarified and discussed the various rulings on cellular service in the Gulf of Mexico area by both land- and water-based licensees.[3] The Petitions for Reconsideration were filed by GTE Mobilnet Incorporated ("GTE"), a Block B[4] cellular licensee of some land areas adjacent to the Gulf of Mexico, and by Coastel Communications Company ("Coastel"), the Block B water-based cellular licensee in the Gulf. Responsive pleadings to GTE's Petition were filed by Petro Com and Coastel. Responsive pleadings to Coastel's Petition were filed by GTE and Southwestern Bell Mobile Systems, Inc. ("SBMS"), which is also a Block B cellular licensee of some land areas adjacent to the Gulf of Mexico.

2. This proceeding began with an application by Petro Com, a water-based licensee, to expand its CGSA to the east and south of its previous CGSA in the Gulf of Mexico. Petro Com's previous CGSA extended from the Texas border with Mexico on the eastern Gulf side, to Biloxi, Mississippi. The captioned application proposed to expand Petro Com's CGSA to include Gulf water areas as follows: from a point on the coastline at the border between Texas and Mexico, which is approximately 26 degrees North Latitude, the proposed CGSA boundary line follows the latitudinal line eastward until it reaches the 1000 foot depth line in the Gulf. From there, the proposed CGSA boundary line follows the 1000 foot depth line eastward through the Gulf of Mexico until it reaches the line of 85 degrees West Longitude. The proposed CGSA boundary line then follows the longitudinal line northward until it intersects with the coastline. Petro Com's service area boundary on the landward side is and was the coastline. *Petroleum Communications, Inc.*, 2 FCC Rcd. 3695 (1987) ("Second PCI Order").

3. GTE was among those who petitioned to deny the captioned application. GTE's grounds for its petition to deny were that water-based Gulf of Mexico cellular licensees should be barred from serving the water area from the coastline to the three league line established by the Supreme Court as the limit of Texas' jurisdiction. In the Order, which denied GTE's petition, the Mobile Services Division (MSD) noted that GTE did not have standing to oppose the captioned application because Petro Com was not proposing to expand its CGSA in the vicinity of any of GTE's service areas. In essence, GTE's petition was an untimely petition to deny directed against settled Commission decisions. However, the MSD considered GTE's petition as an informal pleading pursuant to Section 1.41 of the Commission's Rules. In denying GTE's petition, the MSD relied on major Commission cases affecting delineation between land and water area cellular service, in particular: *Petroleum Communications, Inc.*, 1 FCC Rcd. 511 (1986) ("First PCI Order"), the Second PCI Order, *supra*, and *Advanced Mobile Phone Service, Inc.*, 54 Rad. Reg. 2d (P&F) 260 (1985) ("Miami Order"). *See* note 3, *supra*, for the MSD's summary of these decisions in the context of the instant proceeding.

CONTENTIONS OF PARTIES

4. In its Petition for Reconsideration, Coastel argues that the Order established new law affecting Coastel's Gulf operations without providing adequate notice to it. In particular, Coastel takes issue with the Order's ruling that land-based cellular licensees are not limited to *de minimis* [5] excursions (issue (c) in note 3, *supra)* beyond the coastline where none of the water-based Gulf cellular licensees has a CGSA. Coastel argues that the Commission has determined that the GMSA "will be treated like any other MSA or RSA" and therefore, it argues, adjacent cellular licensees should never be able to encroach on Gulf waters by more than a *de minimis* amount.[6]

5. In opposition to Coastel's Petition for Reconsideration, GTE argues that Coastel wants to restrict land-based cellular licensees from encroaching on Gulf waters by more than a *de minimis* amount, but does not wish itself to be bound to limitations of its own CGSA. SBMS, a Block B cellular licensee of land areas adjacent to the Gulf of Mexico, argues in opposition to Coastel's Petition that Coastel does not show why it did not take part earlier in the proceeding. SBMS states that "Section 1.106 of the Commission's rules is 'not intended to provide persons the option of submitting their objections after Commission action,'" *Concord Telephone Exchange, Inc.*, 56 Rad. Reg. 2d (P&F) 653, 656-57 (1984). SBMS states that the Order is fully consistent with established GMSA licensing procedures and with other rules and policies of the Commission.

6. In reply to GTE, Coastel reiterates that it seeks to overturn the applicability of the Order to Coastel and to argue that the Order has no legal support for ruling that there is no restriction on a land licensee's extension of water area coverage beyond its MSA and into the Gulf

which is not covered by a water-based Gulf licensee's CGSA. In short, Coastel requests "that the Gulf of Mexico be treated as an MSA or RSA."

7. In its Petition for Reconsideration, GTE argues that the Commission's decision *In the Matter of An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems and Amendments of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems*, CC Docket No. 79-318, 50 Rad. Reg. 2d (P&F) 1673 (1982) *("Second Inquiry")*, established that county boundaries define MSAs, and that county boundaries adjacent to the Gulf extend to the Three-Mile or Three-League Lines ("TML") in the Gulf. It argues that the Commission relied on the Office of Management and Budget (OMB) definition of MSAs (which does not exclude water areas) rather than the Census Bureau definition of MSAs (which excludes water areas and treats large water areas as the borders of coastal counties). GTE also argues that its license does not specifically exclude the TML area from GTE's service areas. GTE argues that it should be able to serve water areas out to the TML within its CGSAs.[7] GTE also argues that the Order violates the rule of *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945), because, it claims, the TML area has been licensed both to land licensees and to Gulf licensees. GTE suggests that the TML area be treated as a minimal CGSA overlap area, so that both land-based and water-based licensees could serve the area.

8. In opposition to GTE's Petition, Petro Com argues that GTE had notice of the Commission's reliance on the Census Bureau's exclusion of water areas from coastal MSAs prior to the time GTE filed any of its applications for coastal MSA cellular service from the *Miami Order*, 54 Rad. Reg. 2d 260 at 271 n. 33. Petro Com points out that the *Miami Order* was issued after the *Second Inquiry*, *supra*, but before the grant of the first GTE application. In the *Miami Order*, Petro Com argues, the Commission excluded extensive water areas from MSAs, thus adopting the Census Bureau position on this point. Therefore, Petro Com argues, GTE could have requested a waiver of the Commission's determination regarding MSA service over extended water areas. Since no waiver was granted, Petro Com argues, GTE's licenses "cannot be taken to have included any authority to operate at variance with the Commission's Rules and policies." Petro Com argues that GTE should have been aware that in no case has the Commission authorized CGSAs of adjacent areas to overlap. Petro Com further argues that *Ashbacker* does not apply because the service area granted to GTE never included any area which could be overlapped by Petro Com, and therefore no mutual exclusivity could occur.

9. Moreover, in its opposition to GTE's Petition, Coastel argues that the Commission did not "adopt" OMB's definitions, but instead used them for guidance. Coastel points out that although the Commission stated it was defining MSAs in terms of county boundaries, nothing in the decisions indicates that the Commission intended to extend the areas for coastal MSA applicants into the Gulf. Rather, Coastel states, "the Commission, prior to the grant of any authorization to GTE, adopted the position of the Bureau of Census that MSAs 'do[] not include extended lake or ocean areas,'" citing the *Miami Order*, 54 Rad. Reg. at 271 & n. 33. Coastel argues that as to the Gulf, the Commission's contemporaneous intention was to not include the Gulf area in MSAs. Coastel also argues that the Commission considered the question of whether there were certificated wireline carriers in the Gulf and found that there were not. Because GTE did not request reconsideration of this decision, Coastel argues that GTE cannot be heard to claim that it is not bound by the restriction, citing *Capital Telephone Company v. FCC*, 498 F.2d 734, 740 (D.C. Cir. 1974). Coastel further argues that the *Execunet* case does not support GTE's arguments. That case, argues Coastel, refers to a carrier's authorization under tariff within the scope of Section 214, and holds that the FCC may establish rules and policies generally applicable to carriers, thereby limiting the extent of the services to be provided. *Id.* at 373.

10. In response, GTE argues that the Petro Com proceedings did not put it on notice that the seaward boundary of land licensees was in issue. It further argues that the Commission determined that Section 22.903 of the rules would allow minimal overlaps between a Gulf provider's service area and the service areas of nearby land-based operators. GTE states that "[a]s far as GTE Mobilnet could have ascertained at the time, such an overlap might have referred to the TML water area. . . ." In addition, GTE argues that by making all Gulf applications mutually exclusive in *Petroleum Communications, Inc.*, FCC 83-434 (released October 7, 1983) *("1983 Order")*, and by viewing TML areas as belonging to Gulf licensees over the protest of land-based operators, the FCC has itself created rights to a comparative hearing between land licensees and Gulf licensees pursuant to the holding in *Ashbacker*. Accordingly, GTE suggests that the TML be considered open to service by both land-based and Gulf cellular providers based on a finding that the TML is a minimal overlap with the GMSA.

DISCUSSION

11. GTE raises three major issues: 1) whether the *Second Inquiry* established boundaries at the TML for counties adjacent to the Gulf of Mexico; 2) whether GTE had notice that the TML water areas of such counties would not be part of its service area; and 3) whether GTE's licenses for land areas adjacent to the Gulf actually include areas outside the coastline within its CGSAs.

12. First, GTE is incorrect that the Commission's decision in *Second Inquiry* established boundaries for MSAs adjacent to the Gulf. The *Second Inquiry* was silent on the question of including water areas in MSAs. Water areas were excluded from consideration in MSA coverages from the inception of the cellular licensing process: for example, only dry land areas were considered in calculating coverage amounts. The *Further Order Prior to First Hearing Session*, CC Docket No. 82-721, by Administrative Law Judge Fitzpatrick, quoted in the Order at paragraph 5, is an expression of this policy. The question of ocean area coverage was first addressed in the *Miami Order*. There, the Bureau stated explicitly that coastal MSAs are defined pursuant to the U.S. Bureau of Census determination excluding extended lake or ocean areas. Such extended water areas were defined as "outside the SMSA." 54 Rad. Reg. at 271, paragraph 27.

13. The question of water area coverage was addressed by the Commission in its *1983 Order*. There, the Commission specified that the *Second Inquiry* did not address service in the Gulf of Mexico. In view of this holding, GTE has no support for its argument that our reference to OMB's definition of MSAs in the *Second Inquiry* in another context can be used to mean that the Commis-

sion's definition of coastal MSAs includes the water portions of coastal counties between the coastline and the TML. Moreover, the initial developmental application filed by Petro Com which ultimately prompted the *1983 Order* proposed to include virtually all of the TML area, particularly areas close to land. (In the *1983 Order* the Commission ultimately accepted that application under its cellular rules, having denied Petro Com's request that developmental rules apply.) GTE was a party to that proceeding. Further, the Commission specifically found that no wireline carrier served the water areas. It requested applications be filed to serve the entire Gulf area because it found that the public interest would best be served if the Gulf were served as a unified area, rather than piecemeal by many different land licensees who might have varying priorities. Clearly, in view of the *1983 Order*, we conclude in response to the first issue that the *Second Inquiry* was not intended to establish the border of coastal MSAs at the TML.

14. In answer to the second issue we conclude, based on the foregoing discussion, that GTE had notice that the TML water area could not be part of its service areas. As discussed above, the Commission has long established procedures for the orderly licensing of cellular carriers that include delineation of areas to be covered. In establishing the coastline boundary for Gulf licensees, *Memorandum Opinion and Order*, Mimeo No. 6337 (released August 14, 1985), *aff'd*, *Petroleum Communications*, 1 FCC Rcd. 511 (1986), the Commission stated that it did so to ensure that Gulf licensees "operate consistently within our overall national cellular licensing program." The Commission's national cellular licensing program is clearly designed to assign specific, protected geographic areas to licensees for a period of five years. Accordingly, GTE should have been aware of the import of Commission decisions pertaining to the Gulf of Mexico cellular licenses.

15. GTE asks that we consider whether GTE's licenses for land areas adjacent to the Gulf actually include areas outside the coastline within its CGSAs. Contrary to GTE's assertions, it is not clear whether some early cellular applications may have been granted which included areas outside the coastline. Since this issue is irrelevant to the grant of Petro Com's instant modification application, we refrain from deciding this hypothetical controversy at this time. As these matters are placed in controversy for specific market areas, we will address them on a case-by-case basis.

16. We also disagree with GTE's argument that it has *Ashbacker* rights over water areas of the Gulf of Mexico. The coastline boundary delimits the area in which land-based Gulf coastal cellular licensees may claim electrical exclusivity, just as it does for Gulf water-based cellular licensees. Accordingly, no mutual exclusivity can exist between land licensees and water-based licensees. *See 1983 Order* ("any offshore applications that may be filed are not mutually exclusive with any applications for areas onshore").

17. Coastel's Petition raises only one issue, and that is whether land-based cellular licensees should be limited to *de minimis* excursions over the coastline.[8] In the *Order*, the MSD stated that where a water area has not been claimed by a water-based licensee, the land-based licensee may serve those unclaimed water areas adjacent to its area. This statement needs clarification. We have often had occasion to state that licensees may not serve more than a *de minimis* amount of territory outside an MSA or RSA. Whether or not an extension is *de minimis* depends upon the circumstances of the particular situation. *Miami Order* at 266; *see also Order on Reconsideration (Round IV Petitions)* 103 F.C.C.2d 171, 173 (1986). Accordingly, under the present criteria for permissible *de minimis* extensions, it is likely that in the eastern Gulf, which is an area with few fixed platforms and is also an area in which neither Gulf licensee has yet requested expansion of its CGSA, larger excursions of 39 dBu contours may be acceptable under the *de minimis* standards.

ORDERING PARAGRAPHS

18. THEREFORE, IT IS HEREBY ORDERED that pursuant to Section 0.291 of the Commission's Rules, the Petition for Reconsideration of GTE Mobilnet, Inc., IS DENIED.

19. IT IS FURTHER ORDERED that pursuant to Section 0.291 of the Commission's Rules, the Petition for Reconsideration of Coastel Communications Company IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] The CGSA is defined by the applicant as the area intended to be served by its cellular system. The CGSA may not extend other than by a *de minimis* amount beyond the boundaries of the Metropolitan Service Area (MSA) or the New England County Metropolitan Area (NECMA). *See* Section 22.903 of the Commission's Rules. *See also* note 5, *infra*.

[2] The GMSA is comprised of water areas of the Gulf of Mexico outside the coastlines of Texas, Mississippi, Alabama, Louisiana, and Florida as defined by the Commission. *Memorandum Opinion and Order*, Mimeo No. 6337 (released August 14, 1985), *aff'd*, *Order on Reconsideration*, 1 FCC Rcd. 511 (1986); *Order on Reconsideration*, 2 FCC Rcd. 3695 (1987).

[3] The *Order* summarized the rules pertaining to coastal MSA and RSA licensees and water area licensees as follows:

> a) Coastal MSAs and RSAs do not include water areas outside the coastline. (*Miami Order* and *First* and *Second PCI Orders)*.
>
> b) Where water area is not claimed within a water licensees's CGSA, there is no restriction on the land licensee's incursion into that area. (*Miami Order)*.
>
> c) Water licensees may not have land transmitters and they are restricted to *de minimis* incursions over land, (based on the Carey model of signal propagation), whether the land area is licensed to a cellular carrier or not. . . If a water licensee enters into a regional cellular agreement with a coastal MSA or RSA licensee, the prohibition against land transmitters may be waived as to that land area upon mutual agreement and any required Commission approval. (*First PCI Order)*.

d) Where there exists a water licensee's CGSA, the land licensee must provide interference-free service. Sections 22.902(d) and 22.903 of the Commission's rules apply as between the water licensee and neighboring MSA or RSA licensees. *Order* at paragraph 11.

Section 22.902(d) requires permittees and licensees to coordinate frequency use and reuse with neighboring MSAs or RSAs. Section 22.903 defines the CGSA and describes its legal significance, requires that signal propagation calculation be conducted pursuant to Section 22.504 and F.C.C. Report No. R-6406 (the Carey Report), and states that a proposal to extend the 39 dBu contours of a cellular system will be deemed an application for a change in the CGSA.

[4] "Block B" is the term used to identify the block of frequencies licensed initially to a wireline (*i.e.*, telephone company) carrier. "Block A" identifies the block of frequencies licensed initially to a non-wireline carrier. Blocks A and B are each comprised of the same respective frequencies nationwide. After initial licensing, the frequency blocks may be assigned to either type of carrier so long as there is no community of ownership interest between licensees within the same market.

[5] Excursions into neighboring areas qualifying for the *de minimis* exception are not quantitatively defined. In general, the excursion must be the by-product of engineering design intended to cover areas *inside* the MSA. Thus, *de minimis* excursions are most often acceptable where there are very irregular boundary lines.

[6] Coastel also requests that its five-year fill-in period--the period during which a licensee may expand its CGSA without being subject to competing applications--be calculated from March 24, 1986, the date of waiver of Judge Greene's *Modification of Final Judgement*. This *Memorandum Opinion and Order on Reconsideration* is not the proper forum to address this request. Coastel should request a waiver pursuant to Section 22.19 of the Rules to the extent it believes such a change is justified.

[7] In support, GTE cites *MCI Telecommunications Corp. v. FCC*, 561 F.2d 365 (D.C. Cir. 1977) *("Execunet")*, where the Court of Appeals of the District of Columbia ruled that the Commission could not limit the type of services to be offered over existing telephone lines. GTE argues that the *Execunet* decision prohibits the Commission from limiting GTE's service area once its license has been granted.

[8] Such excursions would be made only by 39 dBu contour extensions; the Commission does not authorize CGSA extensions past the boundary of individual MSAs, RSAs, or water areas.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

RKO GENERAL, INC. (KRTH)
Los Angeles, California

MM DOCKET NO. 84-1184
File No. BR-22

For Renewal of License

FUTURE BROADCASTING, INC.
Los Angeles, California

et al.

MM DOCKET NOS. 84-1186 to 84-1188, 84-1190

For Construction Permit
for a new AM Station

RKO GENERAL, INC. (KRTH-FM)
Los Angeles, California

MM DOCKET NO. 84-1195
File No. BRH-25

For Renewal of License

MARISOL BROADCASTING, LTD.
Los Angeles, California

et al.

MM DOCKET NOS. 84-1196, 84-1198, 84-1199, 84-1201, 84-1203, 84-1207

For Construction Permit
for a new FM Station

FUTURE BROADCASTING, INC.
Assignor

and File No. BAL-890113EF

GRAD-102, as owned by
BEASLEY AM ACQUISITION CORP.
Assignee

For Consent to Assignment
of License for KRTH

FUTURE BROADCASTING, INC.
Assignor

and File No. BALH-890113GV

GRAD-108, as owned by
BEASLEY FM ACQUISITION CORP.
Assignee

For Consent to Assignment
of License for KRTH

and Related Applications File Nos. BL-890112AB, BLH-890112KF

MEMORANDUM OPINION AND ORDER

Adopted: May 9, 1989; Released: May 18, 1989

By the Commission: Commissioner Dennis dissenting and issuing a statement.

1. Before the Commission are: (1) Joint Petition for Approval of Settlement Agreement and Related Relief filed January 12, 1989 by RKO General, Inc., Future Broadcasting, Inc., Valley Radio 670, South Jersey Radio, Inc., COZZIN Communications Corporation, Marisol Broadcasting, Ltd., Radio Radio, Inc., Beasley AM Acquisition Corp. and Beasley FM Acquisition Corp.; (2) Petition of Women Owning Radio, Inc. to Deny or Designate for Hearing filed March 2, 1989;[1] (3) Joint Opposition to Petition of Women Owning Radio, Inc. to Deny or Designate for Hearing filed March 9, 1989 by RKO, Valley, South Jersey, COZZIN, Beasley AM and Beasley FM, Supplemental Opposition to Petition of Women Owning Radio, Inc. to Deny of Designate for Hearing filed March 14, 1989 by COZZIN, and Opposition of Future Broadcasting, Inc. to Petition to Deny filed March 30, 1989; (4) Reply to the Joint Opposition to Petition of Women Owning Radio, Inc. to Deny or Designate for Hearing filed March 22, 1989; (5) Mass Media Bureau's Comments on Applications for Assignment of Licenses filed March 14, 1989; and (6) Withdrawal of Petition of Women Owning Radio, Inc. to Deny or Designate for Hearing filed April 18, 1989.

I. JOINT PETITION FOR APPROVAL OF SETTLEMENT AGREEMENT

2. In their Joint Petition the parties propose to settle this comparative renewal proceeding. The main features of the proposed settlement are: (1) RKO's renewal application for stations KRTH and KRTH-FM would be dismissed; (2) the mutually exclusive applications of Valley Radio 670, South Jersey Radio, Inc., COZZIN Communications Corporation, Marisol Broadcasting, Ltd., and Radio Radio, Inc. would be dismissed; (3) Future's mutually exclusive applications for KRTH and KRTH-FM would be granted; (4) Future would assign the license for KRTH to a wholly-owned subsidiary of Beasley AM and would assign the license of KRTH-FM to a wholly-owned subidiary of Beasley FM; and (5) Beasley AM and Beasley

FM would acquire the physical and other assets of KRTH and KRTH-FM, respectively from RKO by means of wholly-owned subsidiaries. Under the agreement Beasley AM and Beasley FM would pay RKO $86,600,000, of which RKO would pay $30,350,000 to the other applicants.[2]

3. The parties contend that their settlement would serve the public interest by avoiding further burdensome litigation in this case and by helping to resolve the protracted and complex set of interrelated proceedings originally involving 14 RKO-owned stations, including KRTH and KRTH-FM. RKO's basic and comparative qualifications have been at issue in this series of proceedings for more than 23 years.[3] The parties also contend that approval of the agreement will put KRTH and KRTH-FM into the hands of an unarguably qualified licensee that would not suffer the same uncertainties as to its future as RKO does. The parties have submitted affidavits stating that they filed their applications in good faith and not for the purpose of reaching or carrying out a settlement agreement. The Bureau interposed no objections to approval of the settlement.

4. Additionally, the Bureau notes that George G. Beasley, the majority owner of Beasley FM, already has attributable interests in 12 FM radio stations, the maximum number permitted under 47 C.F.R. § 73.3555(d)(1)(ii). Thus, acquisition of KRTH-FM would put Beasley over the limit specified in the rule. On February 3, 1989, Beasley FM sought a six-month waiver of the rule to permit Beasley to achieve compliance with the rule through divestiture. The Bureau supports Beasley FM's waiver request.

5. Women Owning Radio, Inc., an applicant for WOR in New York (also owned by RKO) alleges that a substantial question exists as to whether the applications of COZZIN and South Jersey were filed for the purpose of reaching a settlement agreement. If this is so, 47 U.S.C. § 311(d)(3) would prohibit approval of the settlement.

II. DISCUSSION

6. At the outset, we reject Women's arguments. (As noted above, Women has recently withdrawn its petition to deny. This action appears related to the fact that Women has now entered into a settlement in the New York proceeding. However, under established policy, we examine the merits of petitions to deny, even if they are withdrawn, to determine whether they raise public interest questions. *Booth American Co.*, 58 FCC 2d 553, 554 ¶ 5 (1976).) We have already considered and rejected Women's allegations in approving a settlement involving WRKS-FM in the New York proceeding. *RKO General, Inc. (WOR)*, FCC 89-138, (adopted May 4, 1989). We found that Women had not made a prima facie showing that the South Jersey and COZZIN applications were filed for an improper purpose. Because we have already disposed of Women's allegations in the New York proceeding -- to which Women is a party -- there is no justification for further consideration here.

7. We have fully considered and approved a settlement agreement similar to the instant one in the KHJ-TV, Los Angeles, California proceeding (Docket Nos. 16679-80). *RKO General, Inc. (KHJ - TV)*, 3 FCC Rcd 5057 (1988). We there concluded that strong public interest considerations favor settling what has become one of the most protracted and burdensome proceedings in the Commission's history. Although the circumstances in this case are not identical to those in the Los Angeles proceeding, we believe that essentially the same public interest considerations govern both proceedings. That is, we continue to believe that the public interest is better served in this case by ending this uniquely protracted litigation -- which threatens to continue for many years to come -- so that RKO can withdraw as a licensee and an unquestionably qualified licensee, able to devote its full resources to broadcasting, can take over the ownership of the stations and operate them without a cloud of uncertainty hanging over its head. We also note that approving the settlement would preserve our policy of deterring licensee misconduct. RKO would not receive full compensation for the license. Under the terms of the settlement agreement, RKO would receive only 65 percent of the proceeds of the sale.[4] Further, RKO has already suffered the loss of WNAC-TV in Boston, now worth more than $400 million. And it has received substantially less than full value for six stations sold pursuant to other settlements. In addition, RKO must either withdraw entirely from broadcasting or risk the loss of its remaining stations if the Commission finds it unqualified in Phase I of the KHJ-TV proceeding. Consistent with our disposition of the KHJ-TV agreement, therefore, and for the reasons stated more fully there and which we incorporate herein by reference, we hold that approving the agreement before us would serve the public interest. Similarly, we find that the agreement complies with 47 U.S.C. § 311(d) and 47 C.F.R. § 73.3525. We note, moreover, that in a pleading filed March 14, 1989, the Bureau states that it has reviewed the assignment application and finds that the proposed assignee is qualified.

8. Turning to the multiple ownership question, we agree with the Bureau that granting the six-month waiver requested by Beasley would serve the public interest and would be consistent with the Commission's past practice as indicated in *RKO General, Inc. (WGMS)*, 3 FCC Rcd 5262 (1988). The limited waiver requested would facilitate the public interest benefits of the settlement and would have no undue adverse impact on the listening public.

9. ACCORDINGLY, IT IS ORDERED, That the Petition of Women Owning Radio, Inc. to Deny or Designate for Hearing filed March 2, 1989 IS DISMISSED as requested.

10. IT IS FURTHER ORDERED, That the Joint Petition for Approval of Settlement Agreement and Related Relief filed January 12, 1989 IS GRANTED and the associated Agreements ARE APPROVED.[5]

11. IT IS FURTHER ORDERED, That the following applications for renewal of license and for construction permits ARE DISMISSED with prejudice: RKO General, Inc. (File Nos. BR-22, BRH-25), Valley Radio 670 (File Nos. BP-830506AD, BPH-830506AG), South Jersey Radio, Inc. (File Nos. BP-830511AE, BPH-830512BZ), COZZIN Communications Corporation (File Nos. BP-830512AY, BPH-830512BC), Marisol Broadcasting, Ltd. (File No. BPH-830512CZ), and Radio Radio, Inc. (File No. BPH-830512BE); and that the applications of Future Broadcasting, Inc. (File Nos. BP-800924AC, BPH-800924AA, BL-890112AB, BLH-890112KF) for construction permits and for licenses to cover the construction permits ARE GRANTED; and that the applications for assignment of KRTH (File No. BAL-890113EF) and KRTH-FM (File No. BALH-890113GV) ARE GRANTED.

12. IT IS FURTHER ORDERED, That the principals of Beasley FM Acquisition Corp. SHALL COME INTO COMPLIANCE with 47 C.F.R. § 73.3555(d)(1)(ii), with respect to the common ownership of KRTH-FM and other stations owned by George G. Beasley no later than six months after consummation of the instant settlement.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED and the Partial Initial Decision dealing with the qualifications of the various applicants for a construction permit (*RKO General, Inc. (KRTH)*, 3 Rcd 2270 (I.D. 1988)) IS VACATED as moot.[6]

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Women's standing to file this petition is at best questionable. It is unclear how approval of this settlement would adversely affect Women's interests, which Women can seek to protect in the New York proceeding, where it is a party. *See Cotton Broadcasting Co.*, FCC 89-46 (Feb. 23, 1989) at ¶ 29. However, in any event, we may consider Women's pleading as an informal objection. 47 C.F.R. § 73.3587.

[2] The payments to the other applicants would be distributed as follows:

Future	$17,000,000
Valley	$ 1,241,389
Marisol	$ 5,279,865
COZZIN	$ 1,466,629
South Jersey	$ 4,106,562
Radio	$ 1,255,555

[3] A detailed history of these proceedings is set forth in *RKO General, Inc. (KHJ - TV)*, 3 FCC Rcd 5057 (1988).

[4] As in *KHJ - TV*, it is significant to our approval of the agreement that RKO is receiving significantly less than 75 percent of the fair market value of the stations.

[5] As they have requested, the parties may consummate the mutually contingent transactions in a single closing. Our action shall be effective with respect to the termination of the parties' hearing rights upon their notifying us of closing under those transactions.

[6] The parties request this relief, and it is customary practice. *See United States v. Munsingwear*, 340 U.S. 36, 39-40 (1950); *Boston Community Media Committee, Minority Caucus v. FCC*, 509 F.2d 516, 517 (D.C. Cir. 1975).

DISSENTING STATEMENT
OF
COMMISSIONER PATRICIA DIAZ DENNIS

In Re: Joint Petition for Approval of Settlement Agreement and Related Matters in the Los Angeles, California, Radio Comparative Renewal Proceeding (MM Docket Nos. 84-1184 *et al.*).

I dissent for the reasons stated in my dissent from the KHJ-TV settlement. *RKO General, Inc.*, 3 FCC Rcd 5057, 5067 (1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 85-64

In the Matter of

Notice of Proposed Rule Making to amend Part 31 Uniform System of Accounts for Class A and Class B Telephone Carriers to Account for Judgments and Other Costs Associated with Antitrust Lawsuits, and Conforming Amendments to the Annual Report Form M

MEMORANDUM OPINION AND ORDER

Adopted: May 4, 1989; Released: May 19, 1989

By the Commission:

I. INTRODUCTION

1. In our *Report and Order* in this proceeding, 2 FCC Rcd 3241 (1987) (hereinafter, the *Order*), this Commission conducted a comprehensive inquiry into the manner in which carriers account for costs associated with defending allegations that they violated federal laws. We amended Section 32.7620 of the Rules to require the recording in that account of various litigation-related expenditures.[1] This account is entitled "Extraordinary income charges," and amounts recorded therein normally are not recoverable from ratepayers through the ratemaking process.[2] We did not change our accounting treatment of expenses incurred in defending lawsuits. However, we changed our policy concerning the ratemaking treatment of certain litigation expenses, and created a presumption that in some cases such expenses will be disallowed from the revenue requirement in a tariff proceeding.

2. Six parties filed petitions for reconsideration of the *Order*. While the petitions vary in focus, taken collectively they request that we rescind virtually every change from prior practice effected by the *Order*. Two parties filed oppositions to the petitions, and five parties filed comments supporting the petitions.

3. For the reasons stated below, we conclude that the accounting and ratemaking changes that we adopted in the *Order* for various litigation-related expenditures are fundamentally sound. We have concluded, however, that we should make changes in the way that we treat certain settlement payments for ratemaking purposes. Also, we have determined that under Part 32 of our Rules the expenditures which we stated should be recorded in Account 7620 should instead be recorded in Account 7370. We are changing our Rules to effect this accounting modification.

II. BACKGROUND

4. The Uniform System of Accounts (USOA) governs how carriers must account for the various expenditures they incur. In recent years we have considered the manner in which carriers record certain litigation costs in the USOA.[3] We instituted this proceeding, however, to review in a comprehensive manner whether we should change the way carriers account for all expenditures incurred in defending allegations that they have violated federal law. We stated in the *Notice* that commenting parties should pay particular attention to the incentives or disincentives that our accounting proposals might create.[4] In the *Order*, we considered three types of expenses -- judgment payments, settlement payments, and litigation expenses -- and determined that certain changes in our prior treatment of litigation costs were warranted. Judgments are to be recorded in a nonoperating, or "below-the-line," account when they are paid. Settlements, however, were divided into two groups: those reached before judgment and those reached afterward. We decided that settlement payments in both instances should be recorded in the nonoperating accounts, but their classification would affect the ratemaking treatment of related litigation expenses. Litigation expenses for pending cases may be entered in operating accounts as they are incurred. However, when a judgment adverse to the carrier becomes final, or when a settlement is entered into after an adverse judgment, these litigation expenses, along with interest, are to be effectively moved below-the-line through the ratemaking process by disallowance in the next appropriate tariff filing. Litigation expenses associated with cases settled before judgment are not subject to this recapture treatment.[5]

5. We made clear in the *Order* that the accounting classification under the rules does not represent a final determination of whether a particular expenditure should be allowed or disallowed. The *Order* provides that any particular expenditure may be considered differently for ratemaking purposes if the carrier can convince this Commission in a rate proceeding that the expenditure should be allowed in its computation of its revenue requirement, and thus borne by the ratepayers. The burden of proof in justifying these expenditures will lie with the carrier. Judgments and settlements resulting from actions involving both state and federal claims will be presumed to be entirely incurred in regard to the federal claims and will be booked in the nonoperating accounts. Portions which the carrier can convince the Commission are attributable to non-federal claims may subsequently be allowed for ratemaking. A carrier can also avoid having litigation expenses disallowed by demonstrating what portion of the expenses are attributable to claims on which it prevailed.

6. Petitions for reconsideration were filed by American Telephone and Telegraph Company (AT&T); the Ameritech Operating Companies (Ameritech); Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (U S West); New York Telephone Company and New England Telephone and Telegraph Company (NYNEX); Pacific Bell and Nevada Bell (Pacific);[6] and the United States Telephone Association (USTA). Oppositions to the petitions were filed by the People of the State of California and the Public Utilities Commission of the State of California (California), and by the North American Telecommunications Association (NATA). Comments in support of the petitions were filed by BellSouth Corporation, South Central Bell Telephone,

and Southern Bell Telephone and Telegraph Company (BellSouth); Southern New England Telephone Company (SNET); and Southwestern Bell Telephone Company (Southwestern Bell). Pacific and USTA also filed comments on the other petitions. AT&T, U S West, and the Bell Atlantic Companies (Bell Atlantic) filed replies to the oppositions.

7. The petitioners ask generally that we rescind the new rules and procedures adopted in this proceeding and return to our previous classification of litigation-related expenditures. Before the adoption of the new rules, carriers could record most litigation-related expenditures in the operating accounts. These expenditures could then be disallowed in a subsequent ratemaking proceeding, on a case-by-case basis, if we determined that they should be borne by the shareholders rather than the ratepayers. Under our new rules, many of these expenditures will be presumptively recorded in nonoperating accounts, subject to being recognized for ratemaking purposes in a subsequent proceeding if the carrier can show that the charge should properly be borne by the ratepayers.

III. THE APPLICABILITY OF THE RULES

A. *The Positions of the Parties.*

8. The carriers and USTA object to our extending the applicability of the new accounting procedures adopted in the *Order* to expenditures incurred in all litigation involving a claim that a carrier has violated any federal statute. AT&T states that the primary focus of both this proceeding and the prior Commission inquiries addressing litigation costs has been on antitrust cases. In this area, according to AT&T, this Commission has stated that because of its special interest in the important public policy established by the antitrust laws, it would not consider violations of those laws to be a routine part of operating a business. It states that this Commission has made no such findings with regard to other federal laws. Nor, AT&T claims, has this Commission provided any basis for distinguishing between cases involving "other federal statutes" and "judgments arising in the ordinary course of business out of contract disputes, tort liability for accidents, workman's compensation, and the like," which we stated would not be subject to the presumptive disallowance rule.[7]

9. Ameritech states that our discussion of litigation costs is made mostly in the context of antitrust litigation. It states that while this Commission asserts that the same analysis applies to other federal statutes, we did not review the nature of claims involved with other federal statutes or address the fact that certain actions are based on remedial, rather than punitive, factors. Ameritech asserts that many statutes do not involve penalties and fines for their violation, and the decision to settle a case involving such statutes is more often made on a subjective basis than on a strict economic analysis.

10. USTA asserts that the scope of the *Order* is broader than the scope of the proceeding as set out in the *Notice*. It states that the rule as adopted provides a plaintiff with effective power to modify a carrier's accounting merely by the inclusion of allegations of federal law violation. USTA claims that a significant amount of complaints covering issues clearly within the ordinary course of business also allege violations of federal statutes, and that the mere allegation of such a claim does not render the issue "extraordinary" and should not control accounting. It states that the proliferation of federal statutory law will make this Commission's rule difficult to administer. It claims that the underlying facts must determine whether a claim is extraordinary, not simply the alleging of a federal law violation. USTA states that one way to address the situation would be to identify specifically the federal statutes of concern. These statutes, it claims, should be limited to federal antitrust laws, federal criminal statutes involving crimes in the nature of a felony, and other statutes where payments in the nature of penalty (rather than compensatory payments) result. Another alternative it proposes would be to require that the statutory claim be the primary remaining colorable cause of action at the time of settlement, so that it is not a mere allegation.

11. U S West also asserts that there is no adequate discussion of the extension of the reach of the new rules to cover all federal statutes. It claims that it is not clear that this Commission realizes the enormity of this part of the decision, and that we make no effort to show that adverse judgments, settlements, and litigation expenses involving alleged violations of every federal law lead to extraordinary or unnecessary expenses.

12. BellSouth states that the rules adopted in this proceeding are overly broad. It states that at any given time it has pending several thousand lawsuits, many of which allege federal statutory violations. BellSouth claims that the rules as adopted will increase the cost of providing regulated phone service with no corresponding benefit to the ratepayers. It urges a return to the preexisting rules with the costs being recorded in operating accounts, except for penalties for criminal misconduct and judgments for patently anticompetitive misconduct.

13. SNET and Southwestern also state that the new rules should not be extended to violations of federal laws other than the antitrust laws. They state that the *Notice* clearly focused on the accounting treatment to be accorded to judgments and other costs associated with antitrust suits. Southwestern asserts that not all federal cases are of this nature, and this Commission's reasoning does not support the extension of the rules to non-antitrust cases.

14. NATA and California oppose the petitions in this regard. NATA states that it believes that the *Order* is sound, that violating federal statutes cannot be regarded as a routine part of operating a business, and that such conduct rarely, if ever, produces a benefit for the ratepayers. Therefore, NATA asserts, expenditures related to such litigation should be presumptively treated as "illegal, unnecessary, or duplicative costs" which cannot be recovered from the ratepayers. California states that its disagrees with AT&T's contention that the new procedures specified in the *Order* should not extend to suits alleging civil or criminal violation of any federal law. It adds, however, that it understands the focus of the FCC rules to be on "antitrust cases and similar cases where deliberate corporate policy and its implementation constitute a violation of federal laws enacted to advance congressionally determined public policy."[8] It states that it does not oppose USTA's suggestion that this Commission identify the relevant statutes of concern.

15. In its reply, AT&T states that the oppositions provide no basis for denying its request that the Commission reverse its presumptive disallowance as applied to suits involving violations of federal laws other than the

antitrust laws. It states that NATA does not address any of the points raised by AT&T, and that California concedes that the scope of the *Order* is overbroad.

16. Bell Atlantic states in its reply that the rules are overbroad in that they cover not only antitrust litigation, on which the *Notice* focused, but also all other litigation involving alleged violations of a federal law. It claims that this Commission has provided no rationale to justify this sweeping result. It states that NATA's argument focuses entirely on antitrust cases, and consequently provides no support for applying the new rules to cases alleging other violations.

17. U S West, in its reply, states that California agrees with U S West's view that the Commission should reflect further on its inclusion within the scope of the new rules of cost associated with violations of every federal law. It states that a proposal so sweeping, and one adopted with so little explanation or justification, is bound to lead to inequitable results and unintentional hardship.

B. *Discussion*

18. We continue to believe that federal statutes other than the antitrust laws also should fall within the scope of our revised accounting rules.[9] For the most part, our new accounting rules and disallowance policy come into play only when a court has determined that a carrier has violated a federal law.[10] In our view, the entry of a judgment in any such case is so significant that we are justified in thereafter placing on the carrier the burden of demonstrating why the expense should be considered a normal part of its provision of service. The considerations and distinctions that USTA raises concerning the different types of statutes may well be considered in a carrier's petition seeking to overcome the presumption of disallowance. The new rules, in our view, balance the need to distinguish between violations that raise public policy implications and judgments that deal with local matters, such as tort actions, that any business may face in its day-to-day operations. The distinction that we have made, which focuses on the violation of a federal law, provides a high degree of uniformity and certainty as to how judgments and settlements are recorded in the USOA. That uniformity assists us in our regulatory overview, such as in our review of carriers' earnings. Moreover, our willingness to consider violations on a case-by-case basis, at the initiative of the carrier, establishes a safety valve when the accounting treatment of a particular case would produce unfair results. The record herein does not establish any other valid distinction for accounting purposes to justify a presumption of ratemaking allowance for certain types of federal law violations but no presumption for others.

19. Our conclusion is buttressed by the fact that the carrier incurring a particular expenditure will both be most familiar with the circumstances surrounding that expenditure and have a strong incentive to bring before this Commission proceedings to have allowed for ratemaking purposes those expenditures which should properly be allowed. The carriers are far better placed than this Commission or third parties to challenge a presumption resulting from accounting treatment when the circumstances so warrant. If a carrier considers any particular violation to be an ordinary part of operating its business, it may argue for a different ratemaking treatment.

IV. JUDGMENTS AND SETTLEMENTS

A. *General Issues*

1. The Positions of the Parties

20. The petitioners raise a number of broad, general objections to our new accounting rules for judgments and settlements. Although many of these arguments were considered and rejected in the *Order*, and thus are not properly before us on reconsideration, we will consider again the general overall approach which we accord to accounting for litigation judgments and settlements. The petitioners' specific concerns about the accounting and ratemaking treatment of settlements entered into before judgment are discussed in paras. 36-47, *infra*.

21. AT&T states that under existing law, carriers may recover through rates all costs and expenses prudently incurred in the course of operating the regulated business, and that this Commission cannot disallow a carrier's expenses unless there is shown to be an abuse of discretion by the corporate officers involving obviously wasteful or imprudent expenditures. It states that carriers are therefore entitled to a presumption that all of their expenses, including litigation costs and payments of settlements and judgments, are incurred in the exercise of reasonable judgment, unless the contrary is shown. It also states that a finding of liability in a legal action, or the settlement of a claim, does not in itself raise an inference of management imprudence sufficient to justify disallowance. It claims that our ruling reverses this well established principle without any rationale or factual justification.

22. AT&T claims that the defects of the rule are not cured by the fact that carriers are permitted to seek inclusion of presumptively-disallowed litigation costs in revenue requirements on a case-by-case basis. It states that because this Commission has stated that the presumption of disallowance will be difficult to rebut and because actions alleging a violation of federal law are a common occurrence, an "extreme and costly" administrative burden will be placed on both the carrier and this Commission if the carrier must come forward with the evidence required to justify allowance of litigation costs under our rules and policies.

23. Ameritech states that settlement payments made in the ordinary course of business and in the interest of ratepayers are properly recovered in the ratemaking process. It notes that our decision only establishes a presumption against the inclusion of such expenses in the ratemaking process. Ameritech claims, however, that this Commission's own analysis shows that the presumption will be difficult to overcome, regardless of whether the expenses are incurred in the normal course of business and for the benefit of ratepayers. It claims that qualifying even a single settlement payment for recovery will be a complex and time-consuming matter, involving unneeded effort and expense for both the Commission and the carrier.

24. USTA in its comments states that all of the petitioners recognize that the rationale of the *Order* is erroneous and will act in ways contrary to the interest of the ratepayer. USTA asserts that the *Order* "will create some significant adverse incentives in handling interstate costs" because it will: (1) raise costs to ratepayers by promoting unnecessarily extensive safeguards and restricting carriers' activities; (2) deter anything but nuisance settlements and

force carriers to litigate instead of settle; (3) remove flexibility in evaluating litigation risk and expense; and (4) encourage relitigating facts a second time in the ratemaking context.[11] USTA also claims that the rules should be clarified to indicate that when there is reasonable justification for a settlement, other than to avoid an adverse ruling or a potential disallowance, this Commission will normally permit the amount to be recorded ultimately in an operating account.

25. Pacific asks us to reconsider our decision and permit carriers to record the costs associated with antitrust judgments, settlements, and litigation expenses in above-the-line accounts until a specific finding is made that such treatment is unwarranted. Pacific claims that this Commission appears to have ignored established precedent that there is a presumption of management prudence requiring recognition of all expenses unless it clearly appears that they are excessive, unwarranted, or incurred in bad faith. It states that our new rules depart from Generally Accepted Accounting Principles (GAAP) with no justification given. It argues that this Commission's stated objective of avoiding the establishment of policies which would allow carriers to evade the financial consequences of activities which may be contrary to law would be better served by disallowing specific costs after an appropriate showing is made that the costs were improperly incurred. Pacific asserts that costs associated with antitrust lawsuits are legitimate corporate expenditures that arise in the normal course of business. It claims that they are no different from the costs arising out of contract disputes, tort liability, or workman's compensation claims. An adverse judgment or a settlement is not evidence of intentional wrongdoing or management imprudence, in its view. It states that these costs are therefore properly includable in normal operating expense accounts. Pacific asserts that this Commission has authority to disallow costs upon a finding of wrongdoing or unlawful action, but that the burden of showing the costs were improperly incurred must fall on those seeking disallowance. Pacific also agrees with the petitioners who argue that the new rules are at odds with public policy and accepted ratemaking principles. It claims that the rules will hamper vigorous and legitimate competition and will artificially skew litigation decisions.

26. BellSouth, in its comments, states that this Commission's presumption that disallowing certain costs for ratemaking purposes will shift them from the ratepayers to the shareholders is illusory, because the increased uncertainty will cause investors to demand a higher rate of return. It states that the new rules are a departure from GAAP. BellSouth asserts that they will disadvantage "dominant" carriers vis-a-vis "nondominant" carriers, and that they will further disadvantage exchange carrier vis-a-vis AT&T if some form of price cap regulation is adopted. It claims that the new rules will also discourage carriers from competing aggressively and from undertaking cost control efforts that could result in charges of violation of antitrust or other federal statutes. BellSouth also claims that this Commission underestimates the costs that will be borne by the ratepayers as a result of the new rules. It states that the rules will increase the cost of providing regulated phone service with no corresponding benefit to the ratepayers. It argues that we should return to the preexisting rules with the costs being recorded in operating accounts, except for penalties for criminal misconduct and judgments for patently anticompetitive conduct.

27. Southwestern Bell asserts that the accounting treatment adopted in the *Order* is contrary to established principles of law and national policy, is contrary to GAAP for nonregulated industries, and is based on faulty assumptions regarding the reasons that companies litigate and settle matters. Southwestern Bell argues that the *Order* will cause litigation costs to increase. It states that carriers will have to establish tracking procedures for any case involving the alleged violation of federal law. It also states that there will be substantial administrative costs in presenting justification to the FCC to allow the expenditures. Finally, Southwestern Bell claims that it is unclear how any reclassification of expenditures eventually allowed will be handled.

28. California states that it supports the *Order* and opposes the petitions for reconsideration. It states that AT&T is incorrect in saying the FCC has altered the burden of proof on cost justification of expenditures. Rather, the FCC has simply placed carriers on notice that certain costs will not be acceptable for inclusion in the revenue requirement unless the carrier can prove that the ratepayers benefited from the conduct that produced the costs. It states that there is no automatic disallowance of the expenditures.

29. NATA states that it believes that the *Order* is sound and should not be reconsidered. It asserts that violating federal statutes cannot be regarded as a routine part of operating a business, and that such conduct rarely if ever produces a benefit for ratepayers. Therefore, NATA claims, litigation costs, as well as related judgments and settlements, should be presumptively treated as illegal, unnecessary, or duplicative costs that cannot be recovered from ratepayers. It argues that "above-the-line" treatment would be inconsistent with this Commission's clear mandate to enforce the antitrust laws and prevent anticompetitive behavior by its regulatees.

30. In its reply, AT&T generally reiterates the views contained in its petition, and asserts that neither California nor NATA provides any justification for the new rules. AT&T claims that California's statement that the *Order* does not create a presumption against allowing litigation costs is erroneous, and that California's argument that the *Order* does not require automatic disallowance is beside the point. According to AT&T, the *Order* ignores the fact that allegations of violations of federal statute are very common and there will be an extreme and costly burden on both carriers and the Commission for carriers to come forward with evidence to justify the expenditures, and that the presumption will be difficult to rebut.

31. Bell Atlantic in its reply states that the Commission's rules are inconsistent with the long standing principle that carriers' expenses are presumed to be incurred in the exercise of reasonable judgment, unless the contrary is shown. It states that NATA's and California's oppositions are based on either an erroneous factual assertion or faulty logic. It states that California's claim that there is no shifting of the burden of proof is incorrect. Bell Atlantic also states that there is no logic in NATA's argument that the recording of settlement payments and litigation costs above-the-line would encourage antitrust violations. It asserts that NATA focuses entirely on antitrust cases, and thus provides no reason for applying

the new accounting rules to other cases. Also, it claims that even if the rules were limited to antitrust litigation, a rebuttable accounting presumption will not encourage carriers to violate the antitrust laws.

2. Discussion

32. Most of the petitioners favor allowing carriers to book litigation-related expenditures in operating accounts, with specific costs being disallowed only after an appropriate showing that the costs were improperly incurred. AT&T, for instance, states that this procedure is "consistent with sound and well-established ratemaking principles and would properly balance the interests of ratepayers and shareholders and the rights of carriers to recover their legitimate expenses."[12] However, the various arguments put forward in support of this proposition were all presented to us in response to the *Notice* and were considered by us before we adopted the *Order*. The carriers have presented nothing new to persuade us that the various expenditures arising out of litigation should not be accounted for as we prescribed in the *Order*.[13]

33. The carriers claim that they are entitled to a presumption of reasonableness in their expenditures, and that this Commission gave no adequate rationale for the presumptive disallowance which we adopted. They claim that whether a federal statute is involved in litigation does not control whether litigation related expenditures are made in the ordinary course of business. We do not believe that we are so restricted. In the *Order* we concluded that the public interest will best be served by changing our accounting practices so that payments by carriers, either as judgments or settlements, are placed in a special account which is not among those normally recognized in the ratemaking process. Clearly, when an allegation that a carrier has violated a federal law reaches the point that the carrier has made a payment terminating the proceeding, the carrier should assume a heavier burden than it previously had if it seeks to pass that payment on to ratepayers as a regulated cost. The carriers are in the best position to challenge and overcome any presumption created by our accounting rules. We reject the carriers' contention that the only presumption we can create is the one in their favor.

34. The carriers and USTA also claim that under established law most litigation related expenditures are ordinarily recoverable from the ratepayers so long as they are made in good faith. As we emphasized in the *Order*, we are not in this proceeding making any change in any existing standard of reasonableness for ratemaking purposes. We have merely changed our accounting rules to change the presumption of who must initially demonstrate the reasonableness of such expenditures. It will now lie with the carriers to demonstrate that the ratepayers should bear them. We emphasize again that the accounting treatment resulting from our new rules will not constitute a final determination of whether or not these expenditures will be allowable for ratemaking purposes. Allowability will be finally determined only in a subsequent ratemaking proceeding.

35. Finally, we do not agree with petitioners that the rules and procedures that we have adopted violate GAAP. In the petitions for reconsideration and the ensuing comments, the carriers merely make conclusory statements that the new rules are inconsistent with GAAP; they do not specify how they are inconsistent. In the comments filed in response to the *Notice*, several of the parties made somewhat more specific arguments.[14] There they assert that the various expenditures involved here are not unusual in nature and are not "extraordinary" as defined by GAAP. GAAP does contain a definition of extraordinary items, and the accounting treatment specified in the *Order* would have required the booking of the various litigation related items into an account dealing with extraordinary items. However, as is discussed in paragraph 57 below, we are changing the account into which most litigation related items must be booked. This account (Account 7370, Special charges) addresses non-extraordinary items. As we are amending them herein, our rules will no longer require the costs to be defined as "extraordinary" for accounting purposes.

B. *Settlements*

1. The Positions of the Parties.

36. AT&T states that the presumptive disallowance rule introduces incorrect and perverse incentives into the litigation process. The new rules, AT&T claims, will encourage either early settlements or protracted litigation. It claims that the rule will encourage carriers who have received an initial unfavorable judgment to go forward with appeal or retrial in order to avoid disallowance, even though the litigation costs of doing so might outweigh the cost of an early settlement. AT&T also states that it would give defendants in suits where the carrier is the plaintiff the ability to induce the carrier to settle by threatening to file a federal counter claim, and it creates an incentive for parties who have a dispute with a carrier to induce a carrier to settle disputes prior to the institution of suit on terms the carrier would not otherwise accept by threatening to assert a federal claim.

37. Ameritech asserts that this Commission based its decision to require the initial recording of settlement payments in a below-the-line account on a finding that defendants usually enter into settlements of federal statutory claims because of a general fear of losing their case and that therefore these expenditures should not be considered ordinary for ratemaking purposes, absent further justification. It claims that this finding is made without any concrete support, and that the record contains many vociferous assertions to the contrary, including a statement by the American Bar Association that settlements are commonly made for a wide variety of reasons. It asserts that if any evidence to support the Commission's finding exists, it should be properly presented to the Commission, with interested parties having the opportunity to comment. Absent such evidence, Ameritech claims, this Commission should not rely on a mere unsupported conclusion. It also argues that in many cases the ratepayer is best served by a prudent decision to settle the case rather than leaving matters to the vagaries of litigation. It argues that even if a finding of liability is possible, settlement should not be discouraged if the original action was taken in good faith. Our *Order*, Ameritech asserts, encourages a carrier to litigate rather than settle, and it will arbitrarily and inappropriately affect the determination of whether a case should best be settled.

38. U S West claims that the presumptive disallowance of settlements is arbitrary and unwise, and the total absence of standards governing when settlement payments may be included above-the-line will make the operation of the rules difficult and unlikely to result in evenhanded enforcement. It states that settlements are not "final or-

ders"[15] and do not include an admission usually that the practice complained of occurred, or, if it did, that it was illegal. Further, U S West argues, treating settlements as "final orders" puts this Commission in the position of presuming that a federal law has been violated when there has been no adjudication to that effect. It states that settlements made after judgment are made for a variety of reasons and do not imply an admission of wrongdoing. It also claims that the new rule on settlements is a reversal of long standing practice. It states that the rule is also suspect on policy grounds. It claims that we have chosen without explanation to reward extended litigation and penalize settlement. U S West also claims that the new rules will skew carriers' litigation strategies, with adverse consequences for the Commission, carriers, and ratepayers. It argues that we should change our ruling and assume, as in the past, that a settlement is legitimate unless we determine otherwise in a specific case.

39. Pacific claims that the *Order* without adequate explanation violates public policy favoring settlement. BellSouth states that we have underestimated the costs that will be borne by the ratepayers which will result from applying our new rules to settlement payments. BellSouth states that it has pending at any given time several thousand lawsuits, many of which allege federal statutory violations. The Commission's rules will force a carrier either to make an uncertain and often expensive attempt to obtain summary judgment, settle and then seek to convince this Commission the settlement was in the best interest of the ratepayers, or litigate to final judgment. It states that the costs of convincing this Commission that a settlement is justified will include otherwise unnecessary pretrial actions and extensive expenses; the administrative costs alone may often exceed the cost of the settlements. It claims that litigation to final judgment will also result in unnecessary costs to be borne by the ratepayers.

40. SNET states that the record in this proceeding has demonstrated that settlement costs should be considered ordinary business expenses. It claims our new rules may ultimately burden ratepayers by creating an artificial incentive to continue litigation. It states that the requirements for carriers seeking to recover settlement costs for even a single case are complex, expensive, and time consuming. It states that we have given little guidance regarding the recovery of settlement costs in a ratemaking proceeding, and such recovery may be precluded by principles prohibiting retroactive ratemaking. At the least, SNET claims, we should adopt a suggestion by USTA that settlement costs may normally be booked above-the-line when there is a reasonable justification. SNET also asserts that we stated that it is the entry of a court decision that a law has been violated that drives the accounting classification of costs arising from suits alleging violations of federal law. SNET argues that we did not address how payments to settle claims of alleged violations involve an adverse court decision, and we did not discuss any other rationale why these costs should be accounted for as an extraordinary, below-the-line expense.

41. NATA states that while the new rules may discourage pre-judgment settlements in cases where the carrier is likely to prevail, not to presume any settlements disallowable would encourage antitrust violations. It claims that above-the-line treatment would be inconsistent with the Commission's clear mandate to enforce the antitrust laws and prevent anticompetitive behavior by its regulatees.

42. Bell Atlantic, in its reply, states that there is no logic in NATA's argument that recording settlement payments or litigation costs in operating accounts would encourage antitrust violations. In its reply, U S West states that NATA's repetition of the statement that the violation of federal statutes cannot be regarded as a routine part of operating a business, does not justify the new rules since such rules cover not only payments to meet adverse judgments, but also certain litigation expenses and all payments to satisfy settlement agreements. U S West states that NATA provides no explanation of its contention that placing settlement payments above-the-line will encourage antitrust litigation. It claims that nothing that has happened under the previous rules suggests this result. U S West claims that any rule that requires below-the-line treatment for all settlements, no matter what the nature of the case or how prudent the settlement, will discourage settlements and skew the litigation process.

2. Discussion.

43. The petitioners have presented no new arguments or information which cause us to alter our belief that payments to satisfy post-judgment settlements should not routinely be charged to ratepayers. As we stated in the *Order*,[16] our decision to have settlements recorded in a non-operating account stems not from a desire to impute wrongdoing in a dispute, but to make it clear that the expenditure cannot be treated as an ordinary expense for ratemaking purposes absent justification.[17] Our decision was based on a careful balancing of the costs and benefits of this approach, including consideration of the possible carrier incentives and consequences to ratepayers if we permit settlements to be recorded routinely in operating accounts. In the end, we determined that the carrier involved is in the best position to know the facts concerning a particular settlement agreement, and thus should bear the burden of showing that the accounting classification should not preclude recovery of the settlement payment through the ratemaking process. We set forth certain considerations that a carrier might raise in support of an argument that a particular settlement payment should be borne by ratepayers.[18]

44. In view of the requests by certain parties that we provide more specific guidelines as to the circumstances when settlement payments may be charged to ratepayers, we have considered anew the question of pre-judgment settlements and we provide the following additional guidance. When a carrier settles a case before a judgment is rendered, a portion of the settlement payment will be presumptively recoverable from ratepayers. That portion is the amount corresponding to the additional litigation expenses, expressed in present value terms, which the carrier reasonably estimates it would have paid if it had not settled and which the carrier would have allocated to the interstate jurisdiction under Part 36 of our Rules, 47 C.F.R. Part 36. If the carrier establishes that a reasonable estimate of the present value of its saved litigation expenses allocable to the interstate jurisdiction is equal to or greater than the settlement payment, then the entire settlement payment is presumptively recoverable in its rates. If the expenses are less than the settlement payment, the carrier is free to argue that the difference should be

charged to ratepayers but the carrier must make a showing of circumstances justifying such treatment without the benefit of a presumption in favor of recoverability.

45. This presumption gives carriers more specific guidance as to what settlements will ordinarily be recoverable in their rates. It also satisfies our concern throughout this proceeding that we develop rules which neither discourage cost-saving settlements of frivolous or unfounded claims nor permit settlements to be passed on automatically to ratepayers nor embroil the Commission unnecessarily in time consuming and burdensome procedures for determining the ratemaking treatment of particular settlements. Our presumption does not discourage beneficial settlements because it facilitates recovery of settlements in those cases that the carrier would likely have won, *i.e.*, those in which the parties settle for no more than the "nuisance value" or saved litigation expenses, of the case. Thus, the presumption significantly reduces the number of cases in which the Commission will be required to consider at length the merits of individual settlements. At the same time, our presumption does not foreclose recovery of settlements in excess of estimated litigation cost savings if the carrier can demonstrate circumstances that justify recovery. Thus, our rules will not, as asserted by the carriers herein, encourage carriers to engage in needless litigation or otherwise introduce "perverse incentives" in the litigation process.[19]

46. Carriers must accompany their requests for recovery of any portion of a settlement with reasonable support for their estimate of saved litigation expenses. The type of evidence needed to support the carrier's estimate will, of course, vary according to the circumstances of each settlement. Among the data a carrier may provide to support its estimate are any available cost estimates provided by the law firm representing the carrier, an estimate of attorney hours needed to complete the case along with the hourly rates for the attorneys involved, information regarding the discovery remaining to be completed, the amount of trial time scheduled by the judge, and information regarding the number of witnesses or documents that would have been introduced at trial, including any pretrial statements filed with the court. The carrier is, of course, free to provide any other material it considers relevant. The carrier should make its request and provide its supporting material as part of the information it files pursuant to Section 61.38(b) of our rules, 47 C.F.R. §61.38(b). We emphasize, however, that we will only permit a carrier to include the portion of a settlement payment representing saved litigation expenses in its revenue requirement when the carrier presents material adequate to make it reasonably certain that, absent a settlement, it would have incurred the expenses it estimates. Inadequately supported estimates will not be accepted.

47. A different situation is presented when the settlement is reached after a court has rendered an adverse judgment. In such circumstances, we do not believe that the presumption outlined in the foregoing paragraphs should be available. The issuance of an adverse judgment by a court should place a heavier burden on the carrier to show why ratepayers should bear any cost of a subsequent settlement payment. Therefore, in such cases, our rule will continue to be that outlined in the *Order*, namely, that carriers should record such amounts in Account 7370, but carriers are free to seek recovery of such amounts in the ratemaking process, although without benefit of the presumption outlined above. In such a case, the carrier may address circumstances such as those identified in the *Order*, including the nature of the adverse findings.[20]

V. OTHER MATTERS

A. *The Positions of the Parties.*

48. NYNEX states that we did not recognize the ramifications of the decision to disallow costs incurred in the course of litigation, and it asks reconsideration of that part of the *Order*. NYNEX claims that our rules will retroactively convert expenses that prior to resolution of the litigation constituted an ordinary and reasonable expenditure of funds into costs "not incurred in the regular course of business." It claims we would retroactively treat these expenses as unreasonable, based on the outcome of the litigation, even though they were incurred in conducting a good faith defense and were in no sense unreasonable in the period in which they were incurred. This result, NYNEX asserts, is particularly harsh in instances where a settlement is entered into after an adverse judgment but while an appeal is still possible, since reversal of the adverse ruling is still possible. NYNEX states that no admission of wrongdoing is implicit in such settlements, and that this Commission has not adequately recognized that to treat a settlement as the equivalent of an adverse judgment for purpose of assigning costs to a below-the-line account will tend to defeat the public policy of settling cases to avoid wasteful litigation and expenses. NYNEX also claims that this treatment will inevitably increase total costs to the ratepayer.

49. U S West asserts that our decision to require below-the-line treatment of litigation expenses associated with adverse judgments and settlements after an initial adverse judgment is based on the dubious proposition that litigation conducted to defend what turns out to be a losing case is not an ordinary and necessary part of doing business. It states that it is in fact often reasonable and prudent to litigate close cases. It claims that application of the Commission's rules may result in burdensome procedures to allocate which expenses may be attributed to counts which were won, counts which were lost, and state law counts.

50. Ameritech claims that this Commission provides little guidance on how these costs will be recovered in the course of a ratemaking proceeding. It states that established principles prohibiting retroactive ratemaking will most likely preclude the recovery of costs booked below-the-line in a previous rate period. It states that existing mid-course tariff filing procedures may also preclude such recovery. It claims that unless this Commission promulgates a sufficient mechanism for recovery of justifiable settlement expenses consistent with other ratemaking procedures, the practical effect of the accounting changes will be to preclude recovery of nearly all settlement expenses. It asserts that in failing to provide such a mechanism, this Commission is in contravention of its obligation to provide for the recovery of all reasonable expenses in the ratemaking process.

51. Several of the parties also fault us for not providing sufficient guidance on how costs will be recovered in the course of a ratemaking proceeding. Several also assert that "established principles prohibiting retroactive ratemaking" will likely preclude the recovery of amounts initially booked in nonoperating accounts.

B. ***Discussion***

52. Several of the carriers claim that the procedures we have adopted will in practice preclude their recovery of expenditures which should properly be borne by the ratepayers. This contention is in part based on the assertion that it will be extremely burdensome and costly to track the expenses incurred in the large number of cases involved and to bring proceedings and present evidence before this Commission to have expenditures reclassified for each of these actions. They also claim litigation expenses will increase.

53. Again the carriers repeat arguments made to us in response to the *Notice*. They state that litigation expenses may be reasonably incurred regardless of the outcome of the litigation. We agree that there may well be instances where litigation expenses incurred in a losing cause may properly be chargable to the ratepayers. Our new policy in this regard merely shifts the burden to require the carrier to come forward and demonstrate which expenses are properly allowable when an adverse judgment has been rendered against the carrier. If the carrier can demonstrate that litigation expenses incurred in a losing action should be borne by the ratepayers, we will not disallow these costs.

54. The carriers' claims that the new rules will be unduly burdensome are at this point entirely speculative. We acknowledge that the tracking of litigation expenses will increase costs to some degree. However, the record does not demonstrate that such additional costs are excessive. Moreover, companies routinely track certain litigation expenses and use that data in assessing settlement possibilities. We have been presented with no evidence suggesting that the administrative burdens will be so large as to preclude allowance of expenditures when that is appropriate. Nor do we believe that the administrative expenses will otherwise be unduly burdensome. Indeed, we believe that a greater burden will likely result, both to this Commission and to the carrier, if we must initiate an inquiry into the facts surrounding particular expenditures and the carriers must gather information about those expenditures long after the expenditures occurred.

55. We do not believe that our policy for recapturing litigation expenses defeats the public interest in settling cases. That policy comes into effect only after an adverse judgment is issued. Litigation expenses incurred in an action settled before initial judgment are not subject to presumptive recapture under our new policy. In all cases the carrier has the opportunity to recover its litigation expenses as they are incurred. Only in the case of settlements reached after an initial adverse judgment does our new recapture policy come into play, and even then the carrier may demonstrate that its litigation expenses should be borne by the ratepayers.

56. Finally, we reject contentions that principles governing retroactive ratemaking may preclude recovery by the carrier of costs that it is entitled to recover. First, our new accounting rules are triggered by a discrete event, the making of a payment to satisfy a judgment or a settlement agreement. Amounts booked "below-the-line" as a result of the occurrence of one of these events may be addressed in the carrier's next following ratemaking proceeding. Secondly, the carriers' arguments overlook the fact that we have well-established procedures for ratemaking and the new procedures are essentially the mirror of those which were in effect before. Under our old procedures, most litigation related expenditures were initially booked into operating accounts, which created a presumption of allowability for ratemaking purposes.[21] This presumption could be overcome in a subsequent proceeding. The implication of the carriers' argument is that the accounting treatment of an expenditure must be determinative for ratemaking purposes. We do not believe that this result is desirable or that our authority is so limited.

VI. RULE CHANGES

57. NYNEX and USTA state that it appears that Account 7370, special charges, rather than Account 7620, extraordinary income charges, is the proper nonoperating account in Part 32 of our rules for booking expenditures under our new procedures.[22] They note that in Part 32, Section 32.7370 and not Section 32.7620 already contains text requiring the booking into the corresponding account of fines and penalties paid on account of violations of statutes. USTA also states that antitrust and related costs do not meet the criteria under generally accepted accounting principles for extraordinary items and that therefore the use of Account 7370 is more appropriate than Account 7620. We agree with NYNEX and USTA that Account 7370 is the appropriate nonoperating account in the new USOA for booking the expenditures involved in this proceeding. We are therefore amending Section 32.7370(d) to conform it to the new text adopted in the *Order* and amending Section 32.7620 to delete this new material and return it to the form it was in before the issuance of the *Order*.

58. USTA also states that the rules themselves should explicitly state that the treatment specified therein does not represent a final determination that judgments or other costs associated with a particular case should or should not be disallowed. We decline to add the statements requested by USTA to the rules. Section 32.7370 specifies what expenditures shall be included into their corresponding accounts. They make no statement about how particular expenditures booked into those accounts will be ultimately treated for ratemaking purposes. As we made clear in the *Order*, the booking of litigation related expenditures into these accounts creates, like any accounting entry, a presumption but does not determine final ratemaking treatment. We see no reason to add language stating in effect that amounts entered into those accounts shall be treated as accounting entries ordinarily are treated.

VII. ORDERING CLAUSES

59. Accordingly, IT IS ORDERED, That pursuant to Sections 4(i), 219, 220, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 219, 220, and 405, the Petitions for Reconsideration filed by American Telephone and Telegraph Company; the Ameritech Operating Companies; Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company; New York Telephone Company and New England Telephone and Telegraph Company; and the United States Telephone Association ARE DENIED, except to the extent indicated above.

60. IT IS FURTHER ORDERED, That Part 32 of the Commission's Rules, 47 C.F.R. Part 32, IS AMENDED, as set forth in the Appendix below, effective **November 27, 1989.**

61. IT IS FURTHER ORDERED, That the "Motion to Accept Late-filed Petition for Reconsideration," filed by the Pacific Companies on July 8, 1987, IS DISMISSED.

62. IT FURTHER ORDERED, That the Secretary shall serve a copy of this *Memorandum Opinion and Order* on each state commission.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 32 of the Commission Rules and Regulations, 47 C.F.R. Part 32, is amended as follows:

1.The authority citation for Part 32 continues to read as follows:

Authority: 47 U.S.C. 154, 47 U.S.C. 219, 220.

2. Section 32.7370 is amended by revision paragraph (d) to read as follows:

§32.7370 Special charges.

(d) Penalties and fines paid on account of violations of statutes. This account shall also include penalties and fines paid on account of violations of U.S. statutes, including judgments arising from a violation of antitrust laws, and payments in settlement of civil and criminal suits alleging such violations; and

3. Section 32.7620 is revised to read as follows:

§32.7620 Extraordinary income charges

This account shall be debited with nontypical, noncustomary and infrequently recurring losses which would significantly distort the current year's income computed before such extraordinary itmes, if reported other than as extraordinary items. Income tax relating to the amounts recorded in this account shall be recorded in Account 7630, Current Income Tax Effect for Extraordinary Itmes - Net, and Account 7640, Provision for Deferred Income Tax Effect of Extraordinary Items - Net.

FOOTNOTES

[1] Section 32.7620, as amended, states as follows:

> This account shall be debited with nontypical, noncustomary and infrequently recurring losses which would significantly distort the current year's income computed before such extraordinary items, if reported other than as extraordinary items. *This account shall also include penalties and fines paid on account of violations of U. S. statutes, including judgments arising from a violation of antitrust laws, and payments in settlement of civil and criminal suits alleging such violations.* Income tax relating to the amounts recorded in this account shall be recorded in Account 7630, Current Income Tax Effect for Extraordinary Items - Net, and Account 7640, Provision for Deferred Income Tax Effect of Extraordinary Items - Net.

The material added by the *Order* is emphasized. The *Order* added similar language to Section 31.370 of the rules. That section has since been repealed.

[2] *See* 47 C.F.R. §65.450(a).

[3] Common Carrier Litigation Expenses, 92 FCC 2d 140 (1982); American Telephone and Telegraph Co. *et al.*, -- Accounting Instructions for the Judgment and Other Costs Associated with the *Litton Systems Antitrust Lawsuit*, 98 FCC 2d 982 (1984) (*Litton Order*), *recon.* 3 FCC Rcd 500 (1988) (*Litton Recon. Order*).

[4] Notice of Proposed Rule Making, FCC 85-120 (released May 3, 1985) (hereafter, the *Notice*).

[5] Interlocutory rulings are not considered to be final judgments for purposes of the application of our new rules. Thus, when a carrier enters into a settlement agreement after a court denies its motion for summary judgment, but before the court issues a judgment on the merits of the case, the carrier's litigation expenses would not be subject to recapture.

[6] The petition filed by the Pacific companies was filed two days late and was accompanied by a motion to accept the late filed petition. NATA states in its opposition that consideration of the petition is precluded by 47 U.S.C. § 405. While we may in some circumstances entertain petitions filed beyond the statutory period, *Gardner v. FCC*, 530 F.2d 1086 (D.C. Cir. 1976), it is not necessary in this instance to address the question of whether we should entertain Pacific's petition. The matters on which Pacific seeks reconsideration were also raised in timely filed petitions. We will therefore treat Pacific's petition as comments and dismiss as moot its motion to accept the late-filed petition.

[7] *See Notice* at para. 5.

[8] California Opposition at 3.

[9] There is no merit to the argument or implication that we have gone beyond the scope of this proceeding as set forth in the *Notice*. We stated in the *Notice* that we proposed to apply the policies and accounting classifications adopted herein to violations of any federal law (*Notice* at para. 5) and parties addressed that issue in their comments.

[10] The exception is the treatment of settlement payments made in a proceeding when the court has not rendered a judgment. We have considered this issue in more detail in paras. 36 to 47, *infra*.

[11] USTA Statement of Support of Petitions for Reconsideration at 3.

[12] AT&T Petition at 10.

[13] Indeed, Southwestern Bell states that most of the arguments delineated in the petitions are ones that Southwestern Bell had previously supported. It argues, however, that although this Commission is averse to reconsidering issues without the presentation of new facts or arguments, the "interrelation of assumptions" that form the foundation for our decision is nebulous and deserves reexamination. Response of Southwestern Bell Telephone Company to Petition for Reconsideration at 1-2.

[14] *See, e.g.*, Comments of the Ameritech Operating Companies, filed June 24, 1985, at 5, n. 4, and Comments of the Bell Atlantic Telephone Companies, filed June 24, 1985, at 3.

[15] By "final orders" U S West appears to mean adverse judgments.

[16] *Order*, 2 FCC Rcd at 3245.

[17] USTA asks that we make clear that prejudgment settlements will ordinarily be permitted to be "recorded finally" in an operating account when there is a reasonable justification for the settlement other than the desire to avoid an adverse ruling or a potential disallowance. USTA Petition at 7. USTA appears to be confusing the accounting treatment of a settlement with the ratemaking treatment. Pursuant to our *Order*, carriers are free to proffer a justification for such payments and seek recovery of settlement amounts from ratepayers in a ratemaking proceeding. The accounting treatment required by Order would be the same whether or not a carrier sought such ratemaking treatment. We will not provide herein for some settlements to be placed in one account and others placed in another account. Rather, all settlement payments are to be recorded in Account 7370.

[18] *Order*, 2 FCC Rcd at 3246.

[19] *See* paras. 36-42, *supra*.

[20] *See Order* 2 FCC Rcd at 3246. Similarily, a showing that a settlement was reached after a judgment favorable to the carrier would be persuasive that the shareholders should not be required to bear the settlement costs.

[21] The *Notice* and our subsequent actions in this proceeding serve notice on the carriers that the ratemaking presumption that previously was associated with the accounting treatment of litigation expenses no longer exists for cases in which an adverse judgment has been rendered.

[22] Part 32 of the Rules was not adopted until after the filing date for all comments in response to the *Notice*. Consequently, no comments addressed Part 32.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Report No. DS-855 **Released: May 19, 1989**

COMMON CARRIER SERVICES INFORMATION

Upon initial review, the International Facilities Division and the Satellite Radio Branch have found the following application acceptable for filing. The Commission reserves the right to return this application, if, upon further examination, it is determined that it is defective and not in conformance with the Commission's rules and policies.

GEOSTAR POSITIONING CORPORATION	CSS-89-003-(3) 1145-DSS-MP-89 1146-DSS-MP-89 1147-DSS-MP-89

Application to modify its three radiodetermination satellite service (RDSS) space station licenses issued in *Geostar Corporation*, Mimeo No. 6144 (released August 7, 1987) by adding eight switchable spot-beams to cover the Caribbean, Central America, and South America and by extending Geostar's service area to include Alaska, Canada, Mexico, the Caribbean, and Central and South America. The proposed modifications will allow each channel to be switchable, by ground command, between a current continental United States spot-beam and a newly proposed beam directed towards a point to the south of the United States. Geostar states that the proposed modification will produce no significant changes in the operating parameters of the satellite when the channels are switched to the beams covering the United States.

Comments or petitions concerning this application may be filed on or before **July 5, 1989.** Replies may be filed on or before **July 25, 1989.** Responses may be filed on or before **August 4, 1989.** Interested parties should submit an original and six copies of any document filed in response to this notice.

Copies of this application, as well as any pleadings filed pursuant to this notice, will be available for inspection in the International Facilities Division Public Reference Room, Room 533, 1919 M Street, N.W., Washington, D.C. and in the Domestic Facilities Public Reference Room, Room 6218, 2025 M Street, N.W., Washington, D.C.

For further information, contact Mike Pollack at (202) 632-7834 or Kathleen Campbell at (202) 634-1624.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GTE HAWAIIAN TELEPHONE COMPANY, INCORPORATED — File No. I-T-C-89-074

Application for authority to provide international packet switching service between Hawaii and the United Kingdom.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 12, 1989; Released: May 19, 1989

By the Chief, International Facilities Division:

1. The above-captioned application, filed on February 27, 1989 by GTE Hawaiian Telephone Company (HTC), requests authority pursuant to the Communications Act of 1934, as amended, to provide international packet switching service between Hawaii and the United Kingdom. The application was placed on public notice on March 15. 1989. No comments were received. HTC will not acquire new facilities initially to provide the service. It proposes to utilize the facilities of Telenet Telecommunications Corp. (Telenet) between Honolulu and the United Kingdom on a transit basis. Connection with Telenet will be made at the HTC's packet switch in Honolulu. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of packet switching service between Hawaii and the United Kingdom by HTC.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-89-074 IS GRANTED, and HTC is authorized to use Telenet facilities (between Honolulu and the United Kingdom) to provide international packet switching service between Hawaii and the United Kingdom.

3. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between HTC and its correspondent in the United Kingdom, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

4. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GRAPHIC SCANNING CORPORATION
Transferor

File No. I-T-C-89-075-TC

and

QNET CORPORATION,
Transferee

Application for authority to transfer Control of Graphnet Inc. and Related Corporate Affiliates.

MEMORANDUM OPINION AND ORDER

Adopted: May 11, 1989; Released: May 19, 1989

By the Chief, International Facilities Division:

1. Before the Bureau is an application (File No. I-T-C-89-075-TC) filed March 7, 1989, by Graphic Scanning Corporation (Graphic), its subsidiary Graphnet Inc. (Graphnet) and QNET Corporation (QNET) pursuant to Section 214 of the Communications Act of 1934, as amended, and Part 63 of the Commission's Rules. The applicants seek authority to transfer control of Graphnet from Graphic to QNET. The application was placed on public notice on March 15, 1989. No comments were received.[1]

BACKGROUND

2. Graphnet is presently authorized by the Commission to acquire and operate various facilities between the United States and numerous foreign countries for the provision of non-International Message Telephone Service (non-IMTS) including telex, facsimile, telegraph and data services. Graphnet is wholly-owned by Graphic who holds the stock of companies involved in telecommunication and broadcast operations. QNET is a Delaware Corporation, which is incorporated, *inter alia*, to engage in communications activities. At this time, Mr. Yaakov Elkon is the President, sole member of its board of directors, and its only shareholder. Mr. Elkon possesses previous experience in the communications area as president and chief executive officer of Consortium Communications International, Inc., (CCI).

3. Graphic proposes to sell to QNET all 9,929,300 issued and outstanding shares of Graphnet common stock, for the purchase price of $1,431,818. As a result, QNET would be the 100% owner of Graphnet. Mr. Yaakov Elkon, President of QNET, personally guarantees performance of the purchase agreement. Moreover, QNET projects a material improvement in the financial condition of Graphnet. It proposes at closing to write off Graphnet's debt, approximately $9,000,000, to its current parent company. It also contemplates the interjection of working capital into Graphnet of up to $2,500,000. QNET forecasts that through operating efficiencies and cost reductions, it may obtain an operating income of $3,287,000 and net income of $1,290,000 during the first year of operation.

DISCUSSION

4. We find that the proposed transfer of control will not result in substantial changes in Graphnet's operations or service to the public. While it appears that there will be changes in the present board of directors, QNET states it will maintain Graphnet's service to the public and operate under existing tariffs. Moreover, Mr. Elkon who will become president of Graphnet will undertake a thorough review of its management and operations including costs, routing, management control and overhead. As a result of this review, QNET expects improvements in Graphnet's operations and service offerings which will make it more competitive.

5. We must also address the issue of whether the proposed transaction will inhibit competition and thereby be detrimental to the public interest. Section 7 of the Clayton Act proscribes the acquisition of stock, other share capital, or assets of a company by another company "where in any line of commerce in any section of the country" the effect of such acquisition may be "substantially to lessen competition, or to tend to create a monopoly."[2] Under Section 11 of that statute, the Commission is empowered to enforce Section 7 in the case of "common carriers engaged in wire or radio communications or radio transmissions of energy." [3] The courts have construed this to mean the requirements of Section 11 of the Clayton Act and the applicable provisions of the Communications Act "are satisfied when the Commission seriously considers the antitrust consequences of a proposal and weighs those consequences with other public interest factors."[4] In brief, we are required to consider anti-competitive consequences as one factor in our public interest consideration. In the present instant, Graphnet has only approximately a 3% share in the non-IMTS market, and QNET has no present market share. It is clear that in this instance the proposed transfer would have no impact on the competitive non-IMTS international market.

6. In view of the foregoing, we find that the public convenience and necessity will be served by approving the captioned application for transfer of control of Graphnet to QNET.

7. Accordingly, IT IS ORDERED that application File No. I-T-C-89-075-TC for transfer of control of Graphnet, Inc., to QNET Corporation IS GRANTED.

8. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities
Division
Common Carrier Bureau

FOOTNOTES

[1] On April 10, 1989, Consortium Communications International, Inc. (CCI) filed a motion to extend the time for filing comments in this matter. On April 13, Graphic, Graphnet, and QNET filed their oppositions to the motion. On April 14, 1989, the Chief, International Facilities Division denied CCI's motion.

[2] 15 U.S.C. §18.

[3] 15 U.S.C. § 21.

[4] United States v. FCC 652 F.2d 72, 88 (D.C. Cir. 1980).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

CENTEL NETWORK COMMUNICATIONS, INCORPORATED — File No. I-T-C-89-077

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 12, 1989; Released: May 19, 1989

By the Chief, International Facilities Division:

1. The above-captioned application, filed on March 6, 1989 by Centel Network Communications, Inc. (CentelNet), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing common carriers to provide international switched voice service between the U.S. and various overseas points. The application was placed on public notice on March 17, 1989. No comments were received.

2. The applicant is a start up company which proposes to resell international switched voice services in competition with other common carriers already providing resale of such services. The applicant has submitted the material required by Section 63.01 of the Commission's Rules. In recent authorizations of new entrants the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.

3. For the foregoing reasons, IT IS CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice services to the general public by CentelNet.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-89-077 IS GRANTED, and CentelNet is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1 US Sprint's Tariffs F.C.C. Nos. 1 and 2, and Allnet's Tariff F.C.C. No. 1 between the U.S. and those points listed in those tariffs.

5. Copies of any operating agreements entered into between the applicant and its correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED the the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61 (October 1, 1987).

8. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTE

[1] *See* the cases cited in the Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n.2.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Liability for Forfeiture of

DOVER RADIO PAGE, INC. — File No. 24786-CD-P/L-1-85
File No. 22632-CD-P/ML-1-86

For Unauthorized Construction and Operation of Station KNKC290 in the Public Land Mobile Service at Lewes, Delaware and Preston, Maryland

MEMORANDUM OPINION AND ORDER AND FURTHER NOTICE OF APPARENT LIABILITY

Adopted: May 12, 1989; Released: May 19, 1989

By the Chief, Common Carrier Bureau:

1. On May 28, 1987, a Notice of Apparent Liability for forfeiture was issued against Dover Radio Page, Inc. (Dover) for the unauthorized construction and operation of two transmitters for Station KNKC290. *Dover Radio Page, Inc.*, 2 FCC Rcd 3181 (Mob. Serv. Div. 1987) (*Dover Radio)*. Dover has filed a Response to Notice of Apparent Liability, and a Petition for Reconsideration requesting that the proposed forfeiture be set aside or substantially reduced.

2. Dover is the licensee of Station KNKC290, a wide area paging system on the Delmarva peninsula, which includes the State of Delaware and the Eastern shore of Maryland. Dover filed an application for authority to relocate its paging facility at Milford to Lewes, Delaware on September 24, 1985, and an application for authority to relocate its paging facility at Easton to Preston, Maryland on April 11, 1986. Prior to grant of these applications, however, Dover completed construction and began operations at both the proposed sites. In *Dover Radio*, the MSD found that Dover had constructed and operated unauthorized transmitters in violation of Section 22.3 of the Rules[1] at Lewes, Delaware for 19 days, and at Preston, Maryland for 24 days.[2] Accordingly, the MSD assessed a forfeiture based on the total number of days of illegal operations at $100 a day pursuant to Section 504(b) of the Communications Act for a total of $4300.

3. In its response and petition, Dover argues that the proposed forfeiture is unduly harsh, and should be set aside or reduced. Dover argues that Section 1.80(b)(3) of the Rules requires that the Bureau consider the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require in determining the amount of a forfeiture. Accordingly, Dover argues that the Bureau should have considered (1) that Dover has not had any offenses in seven years as a Commission licensee, (2) that Dover cooperated with the Commission and its field office in the investigation of the unauthorized operations and (3) that Dover acted under the mistaken, yet good faith, belief that as long as the facilities were operated at reduced power so as not to exceed the service contour of Dover's wide area paging system, prior Commission approval was not necessary. Moreover, Dover argues that an assessment of $100 per day is contrary to the requirement that the Bureau consider the ability of the licensee to pay the forfeiture, and is in excess of any amount previously issued by the Bureau.

DISCUSSION

4. After reviewing the Dover response and petition, we find that Dover has not justified its request to set aside or to mitigate the forfeiture. Under Section 503(b)(1) of the Act, the Commission is authorized to impose forfeiture penalties for "willfully or repeatedly" violating the terms and conditions of a Commission authorization, or for violating any provision of the Act. It is clear that Dover violated Section 22.3 of the Rules by relocating, constructing and operating transmitters at two sites without prior Commission approval. Dover's actions were both willful (Dover constructed and operated the transmitter), and repeated (the activity was continued for 43 days). In these circumstances, Section 504(b) of the Rules specifies that each day of a continuing violation is considered a separate offense. Accordingly, we find that the MSD correctly assessed a forfeiture based on the total number of days that Dover illegally operated the transmitters.

5. Further, we are unpersuaded that the amount assessed per day was inappropriate given the facts and circumstances surrounding the violation. We find no merit to Dover's argument that the forfeiture should be mitigated because Dover acted under the mistaken belief that prior Commission approval was unnecessary before the transmitter sites were constructed and operated. As a general rule, we will not excuse a violation based on a licensee's misinterpretation of the Rules in the absence of other mitigating factors. *See Vernon Broadcasting, Inc.*, 60 Rad. Reg (P&F) 1275 (1986). Second, we do not agree that the forfeiture is excessive in comparison to other forfeitures imposed for unauthorized construction and operation of facilities. [3] *See e.g. MCI Telecommunications Corp.*, 3 FCC Rcd 509 (1988), *as supplemented*, FCC 88-49, (released February 18, 1988), *appeal pending sub nom., Telestar v. FCC*, No. 88-1153 (D.C. Cir. filed February 26, 1988) ($10,000 forfeiture for premature construction of two antenna sites); *Yankee Celltel Co.*, Mimeo No. 3002 (released March 7, 1986) ($8500 forfeiture for unauthorized construction of an additional cellular cell site). Third, Dover has not presented any evidence of its inability to pay the imposed forfeiture. Finally, cooperation with Commission authorities in the investigation of illegal activity does not, absent other persuasive factors, mitigate a violation of the Rules. Accordingly, we deny Dover's request for reconsideration.

ORDERING PARAGRAPHS

6. In light of the foregoing, IT IS ORDERED that the petition for reconsideration filed by Dover Radio Page, Inc. IS DENIED.

7. IT IS FURTHER ORDERED that, pursuant to Section 503(b) of the Communications Act, 47 U.S.C. §503(b), and Section 1.80(f) of the Rules, 47 C.F.R. §1.80(f), that Dover Radio Page, Inc. FORFEIT to the

United States the sum of four thousand three hundred dollars ($4,300) for the violation of Section 22.3 of the Rules, 47 C.F.R. § 22.3.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Section 22.3 of Rules provides, in pertinent part, that, "No person shall use or operate any device for transmission of energy or communications by radio in the services authorized by this part except as provided in this part."

[2] Dover admitted to constructing and operating the unauthorized transmitters. *See Dover Radio*, 2 FCC Rcd at 3181.

[3] As the MSD correctly stated, the cases cited by Dover involving DPLMRS operators " . . . concern unauthorized operation after grant of a construction permit, by companies which failed to file an application for license to cover. Dover constructed and operated without even the color of authority." *Dover Radio*, 2 FCC Rcd at 3181.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: May 19, 1989

CONTEL CORPORATION FILES PETITION FOR REMOVAL OF CONDITIONS PROHIBITING JOINT ACTIVITIES

PLEADING CYCLE ESTABLISHED

Contel Corporation (Contel) has filed a Petition for Removal of Conditions seeking relief from the joint activity restraints imposed on its telephone operating subsidiaries and subsidiary companies American Satellite Company d/b/a Contel ASC (ASC) and Contel Federal Systems, Inc. (CFS) as conditions for previous transfers of Commission authorizations along with a transfer of control. Specifically, Commission approval for the transfer of certain permits, licenses, certificates and authorizations from American Satellite Corporation to ASC in 1980 and from ASC to CFS in 1988 and the transfer of control of ASC to Contel in 1985 was conditioned on probhibitions against various joint operations and activities by Contel and its subsidiaries. Contel now asks that the conditions be removed, contending that such restraints are inconsistent with Commission rules and policies currently applicable to other independent telephone companies and their affiliate relationships.

Persons wishing to comment on this matter may do so no later than 30 days following the release date of this Notice. Reply comments should be filed no later than 15 days thereafter. All filings concerning this matter should refer to File No. ENF-89-11.

Copies of this petition and any subsequently filed documents in this matter may be obtained from International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20036, (202) 857-3800. The petition and documents are also available for inspection and copying in Room 6206, 2025 M Street, N.W., Washington, D.C. 20554. For further information, contact Keith Nichols at (202) 632-4887.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of the Aviation Services
Rules to permit air-to-air
communications on certain frequencies
in the Grand Canyon area.

ORDER

Adopted: May 9, 1989; Released: May 19, 1989

By the Commission:

I. INTRODUCTION

1. This Order amends Part 87 of the Rules (Aviation Services) to permit air-to-air communications between all types of aircraft on the very high frequencies (VHF) 121.950 MHz, 122.750 MHz and 122.850 MHz[1] in the vicinity of the Grand Canyon National Park in Arizona.

II. BACKGROUND

2. As a result of aircraft accidents in the vicinity of the Grand Canyon, the Federal Aviation Administration (FAA) contacted the Commission requesting additional air-to-air frequencies to promote air safety in the area. The Commission and the FAA coordinated selection of the needed frequencies and agreed on the three frequencies listed above.[2] Pursuant to that agreement, the Private Radio Bureau, acting under delegated authority, granted a one year special temporary authority (STA) to permit air-to-air use of the frequencies by all aircraft operating in the Grand Canyon area. [3] The STA was based on the exigency of the FAA's request and was intended to determine whether the three frequencies selected would serve the intended purpose.

3. In a letter dated July 1, 1988,[4] the FAA stated that the frequencies were working well in enhancing flight safety in the Grand Canyon area. The FAA requested further extension of the STA and a rule amendment to authorize the use of these frequencies on a permanent basis. This Order addresses FAA's request for amendment of the rules.

III. DECISION

4. We concur with the FAA's view that the use of the frequencies 121.950 MHz, 122.750 MHz and 122.850 MHz will enhance safety of flight by providing improved air-to-air communications in the Grand Canyon area. The Grand Canyon is unique because of its geographic remoteness and because of the nature of the numerous flight operations in the area. These frequencies have been in use in the area since June of 1987. No adverse comments concerning the use of these frequencies have been received by the Commission or by the FAA. For these reasons, we are amending the rules to implement the permanent use of these frequencies in the Grand Canyon area.

IV. PROCEDURAL MATTERS

5. Section 1.412(c) of the Commission's Rules, 47 C.F.R. § 1.412(c), provides *inter alia* that rule changes may be adopted without prior notice in any situation in which the Commission for good cause finds that notice and public procedure is unnecessary, provided that the basis for the good cause finding is published with the rule changes. Section 1.412(c) of the Rules is based on the authority of Section 553(b)(3) of the Administrative Procedure Act (APA), 5 U.S.C. § 553(b)(3).

6. We find that a notice and comment rule making proceeding in this matter is unnecessary. The frequencies we have authorized for enhancement of flight safety in the Grand Canyon area have been in continuous use since June 1, 1987, under an STA. No complaints or adverse comments have been received concerning this use. Accordingly, we conclude that these changes constitute minor, noncontroversial amendments to our rules in which the public is not likely to be interested. Therefore, compliance with the notice and procedure requirements of the APA is unnecessary.

7. The Rule contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection or recordkeeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public.

V. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), Part 87 of the Commission's Rules IS AMENDED as set forth in the attached Appendix, effective July 3, 1989.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 87 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 87 - Aviation Services

1. The authority citation for Part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-156, 301-609.

2. In Section 87.187, a new paragraph (z) is added to read as follows:

§ 87.187 Frequencies.

* * * * *

(z) The frequencies 121.950 MHz, 122.750 MHz and 122.850 MHz are authorized for air-to-air use for all aircraft from 6000 feet mean sea level up to and including 10,500 feet mean sea level in the vicinity of Grand Canyon National Park in Arizona within the area bounded by the following coordinates:

36-28-00 N. LAT; 112-47-00 W. LONG.
36-28-00 N. LAT; 112-48-00 W. LONG.
35-50-00 N. LAT; 112-48-00 W. LONG.
35-43-00 N. LAT; 112-47-00 W. LONG.

FOOTNOTES

[1] Currently these frequencies are assigned for the following purposes: 121.950 MHz - aviation support, *see* 47 C.F.R. § 87.323(b); 122.750 MHz - private fixed wing air-to-air communications, *see* 47 C.F.R. § 87.187(j); 122.850 MHz - multicom and aviation support, *see* 47 C.F.R. §§ 87.241(b) and 87.323(c).

[2] *See* letter from Gerald J. Markey, Chief, Spectrum Engineering Division, FAA, to Robert McNamara, Chief, Special Services Division, Private Radio Bureau, Federal Communications Commission (April 8, 1987).

[3] *See* STA by Marcus Stevens, Chief, Special Services Branch, Licensing Division, Private Radio Bureau, Federal Communications Commission (June 1, 1987). This STA was later extended to July 31, 1989.

[4] *See* letter from Gerald J. Markey, Chief, Spectrum Engineering Division, FAA, to Robert McNamara, Chief, Special Services Division, Private Radio Bureau, Federal Communications Commission (July 1, 1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-240

In re Applications of

ALBERT E. GARY	File No. BPH-851029MH
KILLINGTON BROADCASTING, LTD.	File No. BPH-851030MN
MOUNTAIN BROADCASTING LIMITED PARTNERS	File No. BPH-851030MP
ELF BROADCASTING COMPANY	File No. BPH-851030MQ
RADIO GROUP, INC.	File No. BPH-851030MR
KILLINGTON, LTD.	File No. BPH-851030MZ

For Construction Permit for a New FM Station on Channel 287C2, in Killington, Vermont

MEMORANDUM OPINION AND ORDER

Adopted: April 28, 1989; Released: May 18, 1989

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

1. By *Memorandum Opinion and Order*, FCC 89M-854, released March 16, 1989, Administrative Law Judge Richard L. Sippel (ALJ) dismissed Radio Group, Inc.'s (RGI) application from this multiparty case. On March 24, 1989, RGI appealed to the Board the dismissal of its application. Oppositions were filed on April 5, 1989 by Elf Broadcasting Co. (Elf), Killington Broadcasting, Ltd. (KBL), and Mountain Broadcasting Limited Partnership (MBLP). As explained more fully below, we will affirm the ALJ's ruling that RGI's counsel defaulted on several critical prehearing requirements, disrupting the other applicants' preparation for hearing.

2. *Background:* The challenged *Order* advances two grounds for RGI's dismissal. First, RGI's failure to hand-serve its direct case exhibits on February 17, 1989, as required by the *Order* establishing procedural dates in this proceeding (FCC 88M-2826, released August 29, 1988), which failure "resulted in effecting delivery on February 27, 1989, to the prejudice of opposing counsel in their preparation for trial." Second, RGI's "demonstrated pattern of casual and dilatory conduct evidenced by an incomplete [Integration and Diversification Statement], a failure of counsel [Thomas L. Root] to have the deposition of February 28 covered by himself or an associate, and a failure to comply with the *Order* requiring same day delivery and receipt of direct case exhibits." FCC 89M-854 at para. 9 (footnote omitted).

3. Failure to timely hand-serve RGI's direct case exhibits on February 17, was deemed a "critical event" by the ALJ in light of the disruption of the ensuing procedural dates, *i.e.*, February 22, 1989 (presentation of a final engineering exhibit); February 24, 1989 (notification of the identity of the witnesses to be called for cross-examination); March 1, 1989, 3:00 p.m. (objections to the witness notifications); and March 6, 1989 (commencement of the hearing). Moreover, aside from the serious disruption caused by mailing rather than hand-serving its direct case, the ALJ held that the circumstances surrounding the late delivery to the parties would have required further examination and explanation before the direct case could be admitted into evidence. In this regard, the ALJ pointed out that there were two significant dates appearing on the service envelopes: (1) the metered postage label, controlled by counsel, set at February 17, which corresponded to the requisite delivery date; and, (2) a February 23rd date affixed to the envelopes by the Post Office. The ALJ noted, in passing, that an opposing counsel suggested that the meter may have been backdated to match the specified procedural date.

4. A second ground for dismissal, according to the ALJ, was Root's failure to attend, or to have other counsel present in his stead, at a rescheduled deposition session on February 28. The subject deposition had previously been truncated to accommodate RGI counsel's travel plans, and his failure to appear at the rescheduled deposition session occurred because Root was yet out of town. While RGI offered to complete the deposition on the following day, that offer was rejected by opposing counsel because objections to the witness notifications were due by 3:00 p.m., and because of the need to prepare for hearing. The ALJ particularly faulted RGI counsel for not having an associate of Root's law firm cover the deposition session in his absence. He underscored the disruption resulting from Root's failure to attend the deposition and to timely exchange RGI's direct case, citing rulings to the flurry of motions which were seeking or opposing witnesses for cross-examination: FCC 89M-680, issued February 28, 1989; FCC 89M-706, FCC 89M-707, FCC 89M-708, FCC 89M-709, all issued on March 2, 1989; FCC 89M-723, FCC 89M-724, both issued on March 3, 1989. When coupled with RGI's incomplete Integration and Diversification Statement, which by itself resulted in a basic qualifying issue being added against RGI, the ALJ found that the totality of RGI's delicts demonstrated a pattern sufficient to justify dismissal of its application.

5. In its appeal, RGI concedes its failure to hand-serve its direct case, attributing this to a "mistake" on counsel's part. However, RGI argues that no disruption actually occurred and asserts that all parties timely noticed RGI's direct case sponsor. It notes that neither party moving for its dismissal (*i.e.*, Elf and KBL) claimed obstruction in case preparation by the late-delivered case. Regarding the failure to attend the deposition session, RGI states that the witness, who had already been the subject of a deposition in October 1988 and on February 3, 1989, had been scheduled for a continued deposition on February 22, 1989, but that such deposition was postponed because the deposing parties failed to obtain a court reporter. RGI adds that considering that the deposition was continuing

and that Root had represented the witness through the preceding hours of deposition, it was not unreasonable for him to insist that he, personally (and not his associate), attend the deposition. Finally, RGI argues, the request for a delay until the following morning could hardly have strained other counsel, who, it submits, were responsible for the predicament in which the parties found themselves.

DISCUSSION

6. The Commission recognizes that "reasonable discretion" vests in the Presiding Officers, who are responsible for administering the course of adjudicatory hearings, *See* Sections 1.241 and 1.243, 47 CFR §§1.241 and 1.243; *see also Pan American Broadcasting Co., Inc.*, 89 FCC 2d 167, 170-171 (Rev. Bd. 1982) (and cases cited therein). "Reasonableness" is assessed in light of the circumstances of each case, to ensure that a proper balance is struck "between the need of the Commission to protect the integrity of its procedures and administrative techniques in view of its limited resources, and the public interest in seeing that scarce broadcast facilities go to the best qualified applicant." *Id.*, at 171. In addition, the Commission recently instructed delegated authorities, as well as applicants, that it would no longer indulge "applicants' temporizing activities." *Hillebrand Broadcasting, Inc.*, 1 FCC Rcd 419 (1986). Instead, greater emphasis was placed on providing "efficient," "expeditious" service to the public. *Id.* The Commission also announced that ALJs would be empowered with broad discretion to implement these objectives. *Id.*

7. Here, the circumstances surrounding RGI counsel's failures to appear at deposition (or to have the session attended by an associate) and to timely exchange RGI's direct case exhibits are particularly egregious. Turning specifically to the deposition matter, we note that RGI, having been notified earlier in the day by opposing parties that they would not consent to holding over the deposition session to the following day, (*i.e.*, Wednesday March 1), given that the hearing was scheduled to begin on Monday, March 6, assured other counsel that RGI would attend the session if it were extended from 1:00 m. to 1:30 p.m. *See* KBL's Motion to Dismiss, filed February 28, 1989, at 2. Nevertheless, counsel did not appear, nor did he send an associate to cover his absence, nor did he provide the three opposing applicants with an explanatory call. Moreover, it was reasonable for the ALJ to conclude that a further delay would have been disruptive given that pleadings concerning objections to witness notifications were due the following day.

8. Failure to timely exchange RGI's direct case exhibits also warranted its dismissal. Both Elf and KBL, in their notifications of witnesses for cross-examination, filed February 24, 1989, noted the failure of RGI to hand-serve its direct case, and, at least with respect to Elf, the impossibility of specifying exhibits to which cross-examination would be directed. KBL was able to obtain a copy late on February 23 after contacting RGI on its own initiative. The ALJ was understandably concerned by the February 17 date stamped by counsel in view of the February 23 date affixed by the Post Office and observed that the time differential would warrant further hearing if RGI remained in the case. We agree that RGI was grossly remiss in not taking corrective action which would have obviated some of the prejudice suffered by the competing applicants and the administrative burden placed on the ALJ. It had ample notice because the first motion to dismiss was filed February 21, 1989, and RGI was again notified on February 23 by KBL that it should hand-deliver a copy of its direct case exhibit. As the ALJ noted, however, RGI's direct case was not received until February 27. It is difficult to conceive that RGI would not have been aware of its mistake (*i.e.*, mailing, rather than hand delivering its direct case) once it received (on February 17) the direct cases of all of its opponents, or when reviewing the witness notification date (February 24), because the exchange of its direct case would have had to be completed before opposing counsel could notice which witnesses they wanted to appear. Moreover, as pointed out by the ALJ, RGI's delay in this matter is even more difficult to condone when taking into account the physical fact that counsel's office is located directly across the street from the ALJ's office.[1]

9. ACCORDINGLY, IT IS ORDERED That the appeal filed March 24, 1989 by Radio Group, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

FOOTNOTE

[1] In this regard, we also officially notice, *see* 5 U.S.C. §556(e), that the same counsel, in at least four other concurrent comparative broadcast proceedings, has been rebuked for similar failures to honor important procedural dates. *See Carroll, Carroll & Rowland*, FCC 89M-1183, released April 14, 1989 (Calhoun, Tennessee FM case, failure to appear at deposition session on March 3, 1989); *Joy FM Limited Partnership*, FM 89M-1198, released April 17, 1989 (Leesburg, Georgia FM case, failure to appear at deposition sessions on March 27 and 28, 1989); *McClenahan Broadcasting, Inc.*, FCC 89M- 1061, released April 4, 1989 (Charlottesville, Virginia FM case, failure to appear for deposition); *National Communications Industries*, FCC 89M-1231, released April 20, 1989, n. 1 (overall general admonition for not showing up for important procedural dates); *see also Shirley Marchant*, FCC 89M-1212, released April 19, 1989 (Omega, Georgia FM case, flagrant default with respect to answering interrogatories, producing documents, and exchanging engineering exhibit).

RGI's contention that its mistakes (at least with respect to the exhibit exchange) were entirely counsel's, was similarly rejected in *Hillebrand*, where the dismissal of the application resulted from the faults of counsel. The Commission pointed out that counsel is the applicant's agent and the applicant is bound by counsel's actions. 1 FCC Rcd 420 at n. 6. Accordingly, the Commission warned that: "it is appropriate, therefore to expect that applicants will choose their counsel with care and know that they will suffer the consequences if they are represented by counsel who do not vigorously prosecute their applications." *Id.*

Before the
Federal Communications Commission
Washington, D.C. 20554

BC Docket No. 78-309

In the Matter of

Amendment of §73.658(i)
of the Commission's Rules,
Concerning Network Representation
of TV Stations in National Spot
Sales

Request of Spanish International
Network (SIN) for Waiver of
§73.658(i)

ORDER

Adopted: May 12, 1989; Released: May 19, 1989

By the Chief, Mass Media Bureau:

1. On May 27, 1988, Seven Hills Television Co. (Seven Hills), licensee of Station KTVW-TV, Phoenix, Arizona, filed a Petition for Reconsideration of the *Further Notice of Proposed Rule Making* in BC Docket No. 78-309, 3 FCC Rcd 2746 (1988) ("*Further Notice*"). In its petition, Seven Hills requests reconsideration of that part of the Commission's actions that excludes Station KTVW-TV from the grant to all other Univision, Inc. (Univision) affiliates of an exemption from the "network representation rule" during the pendency of the above-captioned rule making proceeding.

2. This proceeding was originally commenced to explore possible changes in the Commission's television network representation rule.[1] This rule prohibits television stations, other than those "owned and operated" by a television network, from being represented by their network in the non-network (spot) sales market. At that time, the Commission granted a "temporary" waiver of the network representation rule to affiliates of the Spanish International Network (now known as Univision) pending resolution of this proceeding.

3. Subsequently, the Commission initiated a *Further Notice* to consider, *inter alia*, whether additional options should be considered in light of recent developments. In issuing the *Further Notice*, it found that the temporary waivers relating to the television stations licensed to Spanish International Communications Corporation (SICC) and Bahia de San Francisco Television Co. (Bahia) had become moot because these stations were now "owned and operated" network affiliates of Univision, which had been purchased by Hallmark Cards, Inc. (Hallmark) and thus, no longer subject to the network representation rule.[2] With respect to Seven Hills' waiver status, the Commission stated that final disposition of this matter would be taken in the context of any adjudicatory appeals to the Commission.[3]

4. On May 1, 1989, an order was issued by the General Counsel terminating the adjudicatory proceedings in MM Docket Nos. 83-657 and 84-835 relating to Seven Hills' renewal applications in light of a contract signed by Seven Hills to sell its assets to Hallmark and an application for FCC consent to assignment of KTVW-TV to Hallmark Acquisitions, Inc., a subsidiary of Hallmark.[4] As a consequence, like the other Univision television stations noted above, KTVW-TV will become, subject to final Commission approval, an "owned and operated" network affiliate. Therefore, in view of the foregoing and consistent with our previous action in the *Further Notice*, we likewise find that KTVW-TV, subject to final approval of its assignment application and consummation of the proposed assignment of Seven Hills' assets to Hallmark, should also be exempt from the provisions of the network representation provisions of Section 73.658(i).

5. Accordingly, IT IS ORDERED, That, subject to final Commission approval of Seven Hills' assignment application and consummation of the proposed assignment of Seven Hills' assets to Hallmark Acquisitions, Inc., a subsidiary of Hallmark Cards, Inc., the Petition for Reconsideration filed by Seven Hills IS HEREBY DISMISSED. This action is taken pursuant to authority granted under Section 4(i), 303(r) of the Communications Act of 1934, as amended, and Section 0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Alex D. Felker, Chief
Mass Media Bureau

FOOTNOTES

[1] *See* Section 73.658(i) of the Commission's Rules.

[2] *Further Notice*, 3 FCC Rcd at 2755 n.47.

[3] *Id.* at 2757 n.77. The Commission noted that Seven Hills was not one of the original stations granted a waiver and had been required by a Review Board decision to cease operating as if it had a waiver for its station. *Id.* at 2755 n.37.

[4] *See Order in MM Docket Nos. 83-657 and 84-835*, FCC 89I-32 (released May 1, 1989).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-1
Phase II

In the Matter of

Annual 1988 Access Tariff Filings

MEMORANDUM OPINION AND ORDER

Adopted: December 22, 1988; Released: December 27, 1988

By the Commission:

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INTRODUCTION

1. On December 24, 1987, the Common Carrier Bureau (Bureau) released an Order initiating an investigation of the annual 1988 access tariff filings of several local exchange carriers (LECs).[1] The *December 24 Order* stated that several matters merited investigation. The Order designated apparent inconsistencies between certain cost showings and demand forecasts for investigation in Phase I of this proceeding.[2] On May 20, 1988, the Bureau released an Order designating issues for investigation in the second phase of this proceeding. [3] The *Phase II Designation Order* designated nine issues: inside wire costs, Central Office Equipment (COE) Category 3 costs, COE Category 4.23 costs, Cable and Wire Facilities (C&WF) costs, voice grade special access demand, tax issues, New England Telephone separations data, the entire annual access tariff filing of General Telephone of Florida, and Illinois Bell television and radio services rates. The Order also directed further filings relating to questions designated in the previous phase of this investigation, directed that each Tier 1 LEC file a direct case, and established a pleading cycle.[4]

I. INSIDE WIRE COSTS

A. *Introduction*

2. Over the past several years, this Commission has preemptively detariffed the installation and maintenance of inside wiring.[5] The detariffing of the installation of simple inside wiring and of the maintenance of all inside wiring became effective January 1, 1987. This Commission had previously detariffed complex inside wiring.[6] Under the *Joint Cost Order*,[7] the LECs must account for all inside wiring operations performed after January 1, 1987, as nonregulated activities. In our deregulation orders, this Commission defined inside wiring as all telephone plant, other than customer premises equipment, that is located on the customer's side of the network interface or demarcation point that marks the end of the telephone network. Our rules define the demarcation point or network interface as:

> the point of interconnection between telephone company facilities and terminal equipment, protective apparatus or wiring at a subscriber's premises. The demarcation point is located on the subscriber's side of the telephone company's protector, or the equivalent thereof in cases where a protector is not employed, as provided under the local telephone company's reasonable and nondiscriminatory standard operating practices.[8]

3. The carriers record the costs of installing and maintaining both inside wire and wiring located on the company side of the demarcation point in Account 6362.[9] Carriers apportion the account between regulated and nonregulated activities pursuant to Part 64 cost allocation manuals. The carriers then apply separations procedures to the regulated portion to allocate it between the jurisdictions. Pursuant to the Separations Manual, these regulated costs are jurisdictionally apportioned on the basis of the apportionment of the related investment, which is allocated on the basis of the Subscriber Plant Factor (SPF).[10] Carriers then apply Part 69 procedures to the interstate portion of these regulated costs to allocate it among the Common Line, Special Access, and Pay Telephone subelements on the basis of related investment.[11]

4. The *Phase II Designation Order* stated that the Bureau had examined the LECs' cost support filed in their 1988 tariff review plans (TRPs) and had found a surprisingly high, and unexplained, projection for wiring expense. 3 FCC Rcd at 3103. Because the installation and maintenance of inside wire was deregulated effective January 1, 1987, the Bureau assumed that regulated wiring expense in the historical test period – July 1, 1986, to June 30, 1987 – would be much less than it had been in the previous year, when inside wire was regulated for the full year. In fact, the maintenance expense for the historical test year was $239 million, while the actual expense reported for the previous year cost of service (PYCOS), a full year, was $289 million. *Id.* The Bureau concluded that it was likely that some LECs included in their revenue requirement expense incurred for nonregulated activity. The Bureau noted that the Audits Branch of the Bureau's Accounting and Audits Division had requested and received additional data from some of the LECs; the Bureau directed these LECs[12] to include those data, and to provide a complete justification for the apportionment of the relevant expenses between regulated and nonregulated activities, in their direct cases.

B. *Summary of Pleadings*

1. Direct Cases

5. Ameritech states that its annual 1988 access tariff filing for accounts subject to Part 67 and Part 69 of the Commission's Rules included only regulated expenses in the test period data, and that it has included no nonregulated expenses in the wire maintenance expense amounts. Ameritech Direct Case at 2. Ameritech notes that the relevant Part 31 accounts, 606 (Repairs of Buildings and Grounds) and 605, 232 (Other), included expenses incurred as a result of regulated activities. *Id.* Ameritech further alleges that the expenses in question would not necessarily be expected to decline from the PYCOS to the prospective period because the investment in Account 232 is fairly constant, and the Land and Buildings investment, which drives the allocation of Account 606, is apportioned on the basis of all investment. Thus, Ameritech contends, stability or even a slight increase in regulated wire expense is not surprising despite the deregulation. *Id.* at 3. Ameritech's response to the Audits Branch data request is included as Attachment D to its direct case.

6. Bell Atlantic asserts that its inside wire expenses, contrary to the trend remarked upon in the *Phase II Designation Order*, decreased. Bell Atlantic Direct Case at Appendix A, A-1. Bell Atlantic states that its forecast of regulated inside wire costs for 1988 was reasonable. Bell Atlantic states that the data it provides indicate the following:

(1) Its forecast 1988 regulated wire maintenance costs declined 50 percent compared to PYCOS, in contrast to a 13 percent increase for the industry.[13]

(2) Its common line inside wire total operating expenses decreased 11 percent in contrast to a 29 percent increase for the industry.

(3) Its nonregulated inside wire maintenance expenses are forecast to grow in 1988, confirming a substantial shift in expense from regulated to nonregulated inside wire. *Id.* at A-4. Bell Atlantic attaches as Exhibit A-1 its response to the Audits Branch data request.

7. BellSouth asserts that its data for the inside wire portion of the common line revenue requirement include no nonregulated expenses. BellSouth Direct Case at 4. BellSouth states that the common line inside wire expenses cited by this Commission are developed by using Part 69, which assigns expenses to access elements based primarily on relative investment. BellSouth notes that the primary expense assigned to common line Inside Wire is station expenses, Account 605 under Part 31 and Account 6310 under Part 32. *Id.*[14] In addition to expenses that were deregulated effective January 1, 1987, this account also contains significant expenses that continue to be regulated under Account 6310, according to BellSouth; thus there will be corresponding allocations of these regulated expenses to common line inside wire under Part 69. *Id.* at 4-5.[15] BellSouth projects growth in regulated station expense for 1988, and states that the allocation to common line inside wire will grow as a result. *Id.* BellSouth includes as Exhibit 1 its response to the data request.

8. GTOC notes that it uses, and has used, nonspecific product allocations to apportion commonly incurred expenses to either regulated or nonregulated operations. GTOC Direct Case at 4. Thus, GTOC did not include overheads or support assets specifically associated with inside wiring in its original data request nor in the instant filing. GTOC states that this Commission has never required that its regulated and nonregulated operations be structurally separated, but that GTOC has developed guidelines for the apportionment of costs between regulated and nonregulated operations. *Id.* at 5.[16] GTOC explains that prior to the detariffing of inside wire, Account 605 included activity other than inside wire.[17] Since there was no requirement to do so, GTOC asserts, GTOC did not identify direct inside wire expense separately from other regulated services. *Id.* at 6. The extraneous services were reported with inside wire in 1986, according to GTOC; those expenses remained in Account 605 but were not reported as inside wire expenses in 1987. *Id.* GTOC argues that these expenses must be considered in comparing PYCOS and projected data. GTOC alleges that it generally projects decreases in directly reported wire expenses in 1988. *Id.* at 7. GTOC attaches Exhibit IW, its response to the Audits Branch data request.

9. Nevada Bell states that it has maintained inside wire subaccounts for installation and repair expenses, and that in order to implement deregulation of inside wire in January 1987, it initiated procedures to allocate to nonregulated services those support facility and overhead costs associated with directly identified inside wire costs. Nevada Bell Direct Case at 2. It then estimated these costs for 1985 and 1986 as if inside wire had been deregulated then. It accordingly presents estimated actual data for 1985 and 1986, and actual data for 1987. *Id.* at 3. Nevada Bell asserts that these data show that its wire costs have remained stable during the historical period, and that its forecast for 1988 is consistent with these data. Nevada Bell states that it re-examined its forecast of wire expense in response to the Bureau's *December 24 Order*, and submitted a response that discussed wiring cost allocation revisions it would make if the Commission approved its Revised Cost Allocation Manual. *Id.*[18]

10. New England corrects the data it filed in response to the Audits Branch request, and includes the corrected data as Attachment E. New England Direct Case at 34. New England asserts that it is necessary to distinguish between regulated network terminating wire and nonregulated inside wire on its network, as New England definitions vary from those of other LECs.[19] New England notes that this approach yields a different ratio of regulated to nonregulated wiring expense than some other LECs have. *Id.* at 35. New England then states that it allocates its wiring expenses between regulated and nonregulated activities primarily on the basis of direct time reporting by the individuals who perform installation and maintenance, and that these reports apportion time between regulated and nonregulated installations. *Id.* at 37. Investment-related support facility expenses are allocated based on salary and wage expenses, New England explains, while overhead costs are allocated by applying to all salary and wage dollars factors developed through procedures for developing and using general overhead cost rates. *Id.* at 40-41.

11. New York Telephone (NYT) attaches its data filing as Exhibit E, and notes that it is shifting $10 million of expense from directly allocated nonregulated installation and maintenance expenses to nonregulated overhead expense. NYT Direct Case at 40. NYT then provides the same showing as New England, summarized above at para. 10. *Id.* at 41-48.

12. Pacific Bell states that it did not include projections of nonregulated inside wire expenses in its 1988 interstate access revenue requirement. Pacific Bell Direct Case at 2. Pacific explains that Account 605 contains amounts reflecting costs associated with both nonregulated inside wire activities and regulated house cable and network terminating, wire and equipment activities. *Id.* For its 1988 annual access filing Pacific asserts, it included in Account 605 only expenses relating to the regulated activities. *Id.* at 3. Pacific states that it apportioned costs between nonregulated inside wire and regulated house cable and network terminating wire activities on the basis of actual time reported spent on these activities. *Id.* Pacific Bell asserts that it allocated common support and overhead expenses in the same proportion as direct expenses. *Id.* at 4. Pacific Bell's Exhibit E contains its response to the Audits Branch data request.

13. Southwestern Bell maintains that it correctly identified and excluded nonregulated amounts from its projection of wire expense in the 1988 access tariff filing, and that this filing was consistent with Part 36 and Part 69. SWB Direct Case at 3. Southwestern Bell surmises that its TRP data labeling has provoked some misunderstanding, and explains that its "Common Line - IW" category includes two types of costs: those related to amortization of embedded inside wire, and those allocated to the inside wire subcategory in implementing Part 69. Southwestern

Bell attaches as Exhibit A its response to the Audits Branch request, and as Exhibit B a justification for the apportionment process.

14. United states that its regulated wire maintenance decreased 99 percent from PYCOS to the test year, and that its nonregulated maintenance expenses have increased by more than 48 percent. United Direct Case at 2-4. United includes its data in Attachment F.

15. US West believes that it has handled the apportionment of wire expense in accordance with Commission rules in developing the 1988 interstate access rates. US West Direct Case at 2. It states that the plant specific expenses included in the filing attributable to the wire component of common line are due to Part 69 rules allocating expenses to the access elements on the basis of gross investment, and that the increase in these expenses is due to the new Part 69 rules. *Id.* Further, US West asserts, it did not include any nonregulated inside wire expenses in the budget for the 1988 interstate access revenue requirements which underlie 1988 interstate access rates. US West also states that expenses and investments for all nonregulated products and services planned for 1988 were subtracted from the total budget prior to performing jurisdictional separations. *Id.* at 2-3.

16. US West contends that it has properly excluded nonregulated expenses from its filing, and that increases in installation and maintenance expenses are due to implementation of the new Part 69 rules. *Id.* US West states that the inside wire access element was significantly affected by the Part 69 change regarding GSF investment. *Id.* at 4.[20] US West, referring to Exhibits 1, 2, and 3 in its direct case, maintains that a comparison of data for PYCOS with Part 31 and Part 32 prospective years makes this clear. *Id.* US West contends that the use of the GSF allocation factor as defined in Part 69 may have produced a larger cost assignment to regulated wire than the Commission anticipated; the data provide no basis for an assumption that nonregulated costs have been included in the regulated categories, US West opines. *Id.* at 7. US West states that it has complied with this Commission's rules regarding apportionment of wire expenses between regulated and nonregulated activities, and that there are no errors or inaccuracies in the data it submitted in support of its 1988 tariffs. *Id.*

2. Comments

17. Only American Telephone and Telegraph Company (AT&T) commented on this issue. AT&T contends that several LECs have improperly included in their revenue requirements a total of $303 million for installation and maintenance of simple inside wire -- despite the fact that this Commission detariffed those activities as of January 1, 1987. AT&T Comments at 8. AT&T asserts that what the LECs call "network terminating wire" is improperly included in their regulated expenses.[21] AT&T states that when this Commission detariffed inside wire expense in Account 605, we did not exempt network terminating wire or network interfaces. *Id.* at 11 (citing *Detariffing Order).* AT&T argues that the direct cases reveal that the LECs (with the exception of United) continue to record substantial amounts of installation and maintenance expenses for inside wire in their regulated accounts. *Id.*

18. AT&T further avers that several LECs have improperly included in their revenue requirement expenses associated with installing and maintaining new network interface devices between the protector and the nonregulated inside wire -- expenses that, according to AT&T, should be charged only to the particular customer who benefits from these services, not to the general body of ratepayers. *Id.* at 12-13. AT&T claims that this Commission contemplated, when inside wire was detariffed, that the demarcation point would be in the vicinity of the protector. *Id.* Although we declined to require the LECs to install a standard plug and jack at the demarcation point, AT&T contends, we stated that if such an interface were installed, the primary beneficiary of such a network interface would be the individual customer. AT&T argues that, consistent with the cost-causative policies underlying the *Detariffing Order*, costs incurred in service benefiting the individual customer should be accounted for as LECs' nonregulated activities. *Id.* at 14.

19. AT&T contends that US West's argument regarding Part 69 and GSF provides insufficient justification for US West's inclusion of installation and maintenance expenses. *Id.* at 15 n.**. AT&T also challenges Bell Atlantic for its statement that its wire installation and maintenance expenses have declined to $18 million, stating that no such expenses at all should be included. *Id.* Finally, AT&T charges BellSouth and Pacific Bell with attempting to recover expenses associated with nonregulated customer premises equipment. *Id.* at 15 (citing *Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Joint Board*, 2 FCC Rcd 2582, 2590 (1987) (*Conformance Recommended Decision and Order).*

3. Rebuttals

20. All the LECs[22] reject AT&T's assertion that any LEC work on the customer's side of the protector should be considered nonregulated.[23] Most of the LECs accuse AT&T of misinterpretation of our *Detariffing Order*. Bell Atlantic notes that the *December 24 Order* acknowledged that the identification of the demarcation point can vary from company to company, and stated that it is reasonable to expect that the amount of inside wire in the accounts of different LECs will also vary. Bell Atlantic Rebuttal at 1 (citing *December 24 Order* at para. 36). BellSouth cites Section 68.3 of this Commission's rules, 47 C.F.R. § 68.3, for the proposition that this Commission's definition of the demarcation point is flexible. BellSouth Rebuttal at 6; *see also* Pacific Bell Rebuttal at 2-5. GTOC notes that this Commission has stated that our current policies require the telephone company to provide network terminating wire and network interface jacks. GTOC cites as support the *Docket 88 - 57 NPRM*. GTOC Rebuttal at 4.

21. NYNEX states that this Commission has consistently recognized the existence of regulated network terminating wire. NYNEX Rebuttal at 6-8 (citing *Detariffing Order*, *December 24 Order*, and the Commission's Rules). Ameritech agrees, and states that we specifically refused, in our *Detariffing Order*, to change the definition of the point at which telephone company facilities end and customer-owned premises wiring begins. Ameritech Rebuttal at 2 (citing *Detariffing Order* at paras. 4, 40 & n.2).[24] That point is the network interface or demarcation point, not the protector, Ameritech urges. *Id.*[25] NYNEX also challenges AT&T's arguments, noting that AT&T argued the opposite in another proceeding. NYNEX Rebuttal at 8-9.[26] Pacific Bell states that it does not believe that the term "network terminating wire" is confined to network terminating wire associated with complex systems. Pacific Bell Rebuttal at 5.

22. Several LECs reject AT&T's assertion that no regulated account under Part 32 is comparable to Account 605 under Part 31 – and the implication that all former Account 605 costs are detariffed. BellSouth states that this Commission has already rejected this argument in proceedings relating to the annual 1987 access tariff filings. BellSouth Rebuttal at 8. Ameritech also argues that the Annual 1987 Access Tariff Filings Order, 2 FCC Rcd 866,870 (1987), noted that in certain circumstances telephone companies might still offer Account 605 (installation and repairs) services under tariff. Ameritech Rebuttal at 3.[27]

23. Bell Atlantic notes that regulated costs formerly included in Account 605 are now in Subaccount 6362, summed to Account 6310. Bell Atlantic Rebuttal at 2.[28] NYNEX states that this Commission specifically recognized that the LECs would assign some Account 605 expenses to regulated inside wire, that is, the wire from the protector to the demarcation point (network termination wire). NYNEX Rebuttal at 6-7 (citing *Detariffing Order).* US West argues that AT&T misunderstands the Part 69 allocation of Account 6310 expense to access elements, and explains that Account 6310 expenses are not directly assigned by components, but are allocated based on Part 69 relative distribution of gross Information, Origination/Termination investment. US West Rebuttal at 4-6.

24. Finally, each LEC contends that AT&T has not effectively challenged its filing individually. Bell Atlantic states that AT&T's only reference to the Bell Atlantic direct case on this issue is one sentence claiming that Bell Atlantic has not justified inclusion of *any* inside wire costs; that challenge, Bell Atlantic asserts, is based on AT&T's mischaracterization of Commission policy. Bell Atlantic Rebuttal at 3. BellSouth argues that AT&T's assertion that BellSouth has improperly included over $50 million for nonregulated customer premises equipment (CPE) is erroneous. BellSouth Rebuttal at 9.[29] BellSouth also discusses and seeks to justify its Florida Account 232 embedded investment figures, which were challenged by AT&T, and states that the forecast "was not rate-affecting." *Id.* at 10-11. GTOC agrees with AT&T's comments that an increase in investment in Account 232 should not occur for GTE Florida tariff filing data, and explains that the difference was not due to capitalization of nonregulated activity, but to an error in GTE Florida's data. GTOC Rebuttal at 5.

25. AT&T, NYNEX states, does not rebut the methods NYNEX used to apportion expenses. NYNEX Rebuttal at 9-10.[30] Pacific Bell asserts that, contrary to AT&T's argument, it has not included expenses associated with nonregulated CPE. Pacific Bell Rebuttal at 5-6. The misunderstanding arises, according to Pacific Bell, from its tariff review plan (TRP) COS-3 form; this form is used for identification purposes only, Pacific Bell explains, and not for revenue requirement calculations or rate development. *Id.* Southwestern Bell claims that, contrary to AT&T's assertion, it did not increase its Account 232 investment from the 1987 level. Southwestern Bell did, however, make slight corrections to the original data submitted in its TRP. SWB Rebuttal at 2-5. US West-Northwestern Bell (NWB) responds to AT&T's contention that its embedded investment in station connections inside wire should be removed from its revenue requirements by stating that the reclassification of riser cable in several states is responsible for a majority of the increases in station connections-inside wire identified by AT&T.[31] US West Rebuttal at 2-4.

C. *Discussion*

26. The LECs offer three primary arguments in support of their forecasts for the expense associated with installation and maintenance of inside wire: (1) The plant-specific expense in the common line revenue requirement[32] does not provide an accurate measure of regulated wiring expense because plant-specific expense contains accounts other than Account 6362 (Other Terminal Equipment), in which wire maintenance expense is recorded, and because the common line revenue requirement does not capture all Account 6362 expense. Thus, they argue, the deregulation of inside wire would not necessarily lead to a dramatically lower forecast for plant-specific inside wire expense. (2) Inside wire deregulation reduced rather than eliminated regulated wiring, so the forecast for Account 6362, which contains the maintenance and installation expense associated with all regulated wire, would not necessarily fall significantly. (3) The LEC forecasts of Account 6362 expense do not contain any expense associated with nonregulated inside wire because the forecasts are based on methods and procedures that are consistent with the standards adopted in this Commission's *Joint Cost Order* for separating the costs of regulated services from the costs of nonregulated activities.

27. The LECs are correct that the plant-specific expense in the common line revenue requirement shown in the carriers' TRPs is not equivalent to Account 6362 expense, and that adjustments must be made to obtain an equivalent figure.[33] We have made the necessary adjustments, and our calculation of Account 6362 expense is $250 million, compared to the $320 million for inside wire plant-specific expense shown in the TRPs. While this adjusted figure is smaller, it still represents significant regulated expense associated with an activity that has been detariffed.

28. We also find validity in the LECs' second argument, that substantial amounts of other Account 6362 regulated wire remain. AT&T argues that the LECs have included wiring in the regulated category that this Commission intended to deregulate. We have investigated the LECs' claims and we conclude that some Account 6362 regulated wire continues to exist. Therefore, some reduced amount of Account 6362 expense can be justified. [34]

29. We have also considered the LECs' argument that their cost allocation manuals, submitted pursuant to the *Joint Cost Order*, provide assurance that their forecasts are not contaminated with nonregulated expense. While this argument is consistent with our intent in the *Joint Cost Order*, we note that the manuals were still in the process of being implemented when the LECs filed their forecasts in October 1987, and that the manuals have since been modified at the direction of the Bureau to correct various cost allocation method deficiencies. These considerations, combined with the high level of regulated expense the carriers have forecast, have led us to undertake two studies regarding the LECs' treatment of inside wire. The purpose of the first was to evaluate whether the LECs' forecasts for Account 6362 expense are in fact consistent with the actual level of expense being allocated to their regulated operations. The purpose of the second was to

evaluate the effectiveness of the LECs' accounting procedures and joint cost manuals in apportioning Account 6362 to regulated and nonregulated activities.

30. In the first study, we compared our estimate of the forecast Account 6362 expense to the annualized actual 1988 results for Account 6362 reported by the LECs.[35] The comparison showed that the actual Account 6362 expense was much lower than forecast ($190 million actual compared to $250 million forecast). Although the actual expense in this comparison covers only the first four months of the year, we believe that the significant difference between forecast and actual results will persist, because it is the result of revisions that have been implemented in the LECs' cost allocation procedures since their forecasts were made.

31. In the second study, we analyzed the results of a sample of work activity reports supplied by the LECs for the employees whose expenses are recorded in Account 6362.[36] Account 6362 expense is charged to regulated and nonregulated activities on the basis of the assignment of these activity reports, and we believe that any error in the assignment process will lead to an erroneous charging of expense. We studied three general types of activities: (1) Trouble Found (TF) reports are reports of maintenance calls in which the trouble is isolated or repaired. If the trouble is found to be with regulated wiring, the maintenance call is charged to the regulated operation. Trouble with nonregulated wiring is charged to the nonregulated operation. If the trouble involves both regulated and nonregulated wiring, the maintenance time is divided between regulated and nonregulated. (2) No Trouble Found (NTF) reports are reports for maintenance calls in which the source of the trouble cannot be determined. This kind of report can be the result of an intermittent failure, because the failure may no longer be evident by the time the repair person arrives. (3) Installation reports can involve the installation of both regulated and nonregulated wiring. An NTF report is also filed when there is a service problem, but the repair person finds no trouble with the regulated (network) wiring and is denied access to the nonregulated (inside) wiring.

32. We have found that NTF reports represent a substantial portion of the costs of Account 6362. We have also found that the carriers are assigning virtually all of the costs associated with NTF reports to their regulated operations.[37] We are concerned that at least some of these costs may be attributable to the carriers' nonregulated operations.[38] Although we are not requiring any disallowances of NTF report costs at this time, we will consider this issue in our ongoing oversight of the cost allocation process in CC Docket No. 86-111.

33. We completed the studies described above for all Tier 1 carriers and we are imposing disallowances of inside wire expense for all carriers with forecasts that exceed their actual Account 6362 expenses by material amounts.[39] The comparisons of forecasted expense with actual expense, as well as the disallowance required, are shown in Attachment B herein.[40] The total disallowance is approximately $95.5 million.

II. COE CATEGORY 3 COSTS

A. *Introduction*

34. In the former Part 67 Separations Manual, investment in local switching equipment[41] was included in the former COE Category 6, Local Dial Switching Equipment. The investment in this category was divided into a nontraffic-sensitive (NTS) component and a traffic-sensitive (TS) component.[42] The NTS portion was allocated on the basis of the subscriber plant factor (SPF)[43] and the TS portion was allocated on the basis of dial equipment minutes (DEM).[44] Effective January 1, 1988, we revised the Separations Manual and consolidated the former COE Category 6 with the following former COE categories: Category 4, Automatic Message Recording Equipment; Category 5, Other Toll Dial Switching Equipment; and Category 7, Special Services Switching Equipment. Under the new Separations Manual, the investment in these categories is combined in the new COE Category 3, Local Switching Equipment, which is allocated between the jurisdictions on the basis of DEM.[45] The investment that was formerly contained in COE Category 6 comprises the majority of the investment currently contained in COE Category 3.[46]

35. The LECs are required to phase in the DEM allocation factor over the 1988-1992 period. This Commission adopted this transition for the implementation of the new procedures because the Docket 80-286 Joint Board found that substantial shifts in costs from the interstate jurisdiction to the intrastate jurisdiction would occur if the new procedures were implemented on a flash-cut basis. *See COE Recommended Decision and Order*, 2 FCC Rcd at 2561-62. Under the new procedures, the LECs calculate a frozen composite allocation factor that reflects the total interstate allocation for the combined COE categories as of December 31, 1987, derived under the former Part 67 separations procedures.[47] Thus, for the 1988 access tariff filing, COE Category 3 is only partially allocated on the basis of the new separations procedures.[48]

36. In the *December 24 Order*, the Bureau stated that although this Commission anticipated that some shift in COE costs to the intrastate jurisdiction would occur during the first year of the transition, the access charge computations of many LECs resulted in increased interstate allocations for 1988 compared to the allocations derived through application of the former Part 67 rules for the 1987 access tariffs. 3 FCC Rcd at 1289. The *Phase II Designation Order* directed each of those LECs[49] to provide, as part of its direct case, a detailed and well-documented explanation of the reasons for the increase. 3 FCC Rcd at 3103 and Attachment A.

B. *Summary of Pleadings*

1. Direct Cases

37. Ameritech states that its COE Category 3 data, in Attachment A of its direct case, demonstrate that its apportionment of COE Category 3 costs to the interstate jurisdiction is declining, as this Commission expected. Ameritech Direct Case at 4. Ameritech maintains that each of its companies has seen a shift of costs from the interstate jurisdiction to the intrastate jurisdiction. *Id.*

38. Many of the LECs state that, although the actual amount assigned to interstate COE Category 3 increased slightly from 1987 to 1988, proportionally the allocation

to interstate operations has, as the Commission expected, declined. *See, e.g.*, Bell Atlantic Direct Case at Appendix B, 2;[50] Centel Direct Case at 3;[51] Cincinnati Direct Case at 2-2 to 2-3; Contel Direct Case at 4-5;[52] Nevada Direct Case at 3-5; New England Direct Case at 7; Pacific Bell Direct Case at 5;[53] SNET Direct Case at 5-6;[54] Southwestern Bell Direct Case at 7;[55] US West Direct Case at 8 and Exhibit 4. The reduction in the interstate allocation factor was offset by increases in 1988 aggregate investment levels. *See, e.g.*, SNET Direct Case at 6. Several LECs state that the increase in COE Category 3 investment is due primarily to capital improvements.[56]

39. Cincinnati states that its interstate allocation of COE Category 3 is less than it would have been under the old COE Categories 4, 5, 6, and 7 pursuant to Part 67 rules.[57] Cincinnati Direct Case at 2-2 to 2-3. It also contends that its interstate amount has decreased not only proportionally, but also in absolute terms;[58] United makes the same argument for its Tier 1 companies. United Direct Case at 4-5.[59] Some LECs state that this decline is consistent with the change in the separations rules; they argue that the decline is not in direct proportion to the change in the allocation factor because of changes in overall investment.[60]

40. Some LECs contend that the change in separations rules did, in fact, produce a shift from the interstate to the intrastate jurisdiction, but that this Commission's mode of comparison yields a misleading result. BellSouth Direct Case at 6-7; Rochester Direct Case at 3-6.[61] Several LECs discuss the phasing in of the DEM allocation factor, described at paragraph 35, *supra*, and note that for the 1988 filings, the composite allocation factor is 0.9, while the DEM allocation factor is only 0.1. *See, e.g.*, BellSouth Direct Case at 6.

41. SNET states that, since the phase-in is so gradual and accounts for such a small part of the allocation factor for 1988, this Commission should not have expected any significant change in the jurisdictional allocation of COE Category 3 investment. SNET Direct Case at 7. BellSouth asserts that applying first the composite allocation factor and then the transitional allocator to the same investment yields the expected shift to the intrastate jurisdiction. BellSouth Direct Case at 7, referencing BellSouth Exhibit 2. GTOC, too, argues that its four study area increases are due to the transitional DEM B component weighting. GTOC Direct Case at 7-8.[62] BellSouth contends that this Commission failed to consider that the data it used, the 1987 filed investment averaged, were not designed to be representative of investment relationships as of December 31, 1987. BellSouth Direct Case at 8. Further, BellSouth argues, the Commission fails to take into consideration the fact that growth in the interstate allocation under the Part 67 rules could, and did, occur. *Id.*[63]

42. Rochester argues that actual data from December 1986 and December 1987 demonstrate that the forecast used in the 1987 annual filing under-stated the impact of its conversion to digital technology and the corresponding increase in the proportion of the former COE Category 6 investment classified as non-traffic sensitive. Rochester Direct Case at 3.[64] Still, Rochester records a slight decrease in the interstate assignment of COE Category 3 in 1988. *Id.* at 5.[65] US West maintains that it underestimated the December 1987 composite allocation factor in each study area except Idaho, due primarily to a larger growth in digital investment in late 1987 than was accounted for in the 1988 filed budget. US West Direct Case at 9.

43. New York explains and justifies its small increase in the interstate allocation by noting that it performed a new Basic Study for former COE Category 6 in September 1987, and that this study increased the "A" component composite allocation factor.[66] New York Direct Case at 7. New York also explains, however, that while its average 1987 interstate allocation is lower than its 1988 allocation, the December 1987 interstate allocation, which fully incorporates the effects of the study, is higher than the 1988 allocation, demonstrating the shift that this Commission anticipated. *Id.* at 7-8. New York posits another reason for its increased interstate allocation, stating that total investment in COE Category 3 increased from 1986 to 1987, and is expected to increase again in 1988, because of an accelerated equal access program. *Id.* at 10.[67]

2. Oppositions

44. MCI and AT&T filed oppositions regarding this issue. Both parties assert that several LECs have overstated company investment in COE Category 3. *See, e.g.*, MCI Opposition at 2.[68] MCI calculates that the LECs project a doubling of the increase in total company COE Category 3, at the same time that equal access conversion growth is cut in half. *Id.* at 6. MCI accuses the LECs of padding their rate bases, and challenges them to demonstrate why such dramatic increases are necessary and why they will not lead to overearnings in 1988. *Id.* at 7-8. AT&T specifically challenges BellSouth, asserting that BellSouth has failed to justify the level of COE Category 3 costs it has assigned to the interstate jurisdiction. AT&T Comments at 37.[69]

3. Rebuttals

45. In responding to the oppositions, most LECs state that they have correctly applied the transitional allocation factor, that their COE Category 3 assignments to the interstate jurisdiction are reasonable, and that there are bases for growth other than equal access conversions. *See, e.g.*, Pacific Bell Rebuttal at 12; Ameritech Rebuttal at 4-5. These LECs state that equipment modernization, network improvement, and system growth must also be considered. *See, e.g.*, GTOC Rebuttal at 13-14. BellSouth responds to AT&T's opposition by stating that it has correctly applied the transitional allocation factor, and that this calculation produced a smaller COE Category 3 interstate allocation than did use of the composite allocation factor. BellSouth Rebuttal at 11-15.[70]

C. *Discussion*

46. We find that most LECs have adequately explained and documented the increases in their 1988 COE Category 3 interstate investment when compared to the 1987 tariffs. As explained above, the 1988 filings include only a partially phased-in new allocation factor for COE Category 3. In fact, the new factor accounts for only 10 percent of the allocation for 1988. Thus, any decreases in interstate assignments that this Commission and the Docket 80-286 Joint Board expected to occur as a result of the adoption of the new procedures should be reflected only in a small measure in the 1988 filing. Moreover, it appears that most of the increases in interstate allocations are due to growth in the absolute amount of local switching investment. *See* notes 50-69, *supra*.

47. We have examined the growth trends for the carriers and find that their projected growth in COE Category 3 investment is reasonable. Although some carriers project greater increases or decreases in growth for 1988 than they experienced in 1987, overall, the growth patterns of those carriers over the two-year period are within reasonable limits. While the rate of equal access conversions has slowed, as noted by MCI, we believe that other factors, such as plant modernization and overall system growth, can account for the increases in investment levels reported for COE Category 3.[71] We find that any reductions in interstate allocation factors that would have resulted from the partial implementation of the Part 36 allocation factor have been offset for most of the LECs by increases in aggregate investment levels.[72]

48. We conclude that although a number of carriers have improperly calculated their COE Category 3 interstate allocations for 1988, only one carrier, NET, has submitted calculations that exceed our estimate by a material amount.[73] 005n reaching this conclusion, we analyzed the 1988 interstate allocations of all the LECs using the data provided in response to Attachment A of the *Phase II Designation Order*.[74] In our analysis, we first estimated the correct 1988 COE Category 3 inter-state ratio for each LEC, then we compared it to the ratio of 1988 interstate investment to total investment in COE Category 3 reported by each LEC. We multiplied the difference between these ratios by the carrier's total 1988 COE Category 3 investment. We have determined that NET overstated interstate investment by $12 million based on the following calculations:

(in millions)

NET Forecasts[75]		FCC Calculations		
Unseparated Investment	Interstate Investment	Interstate Ratio[76]	Interstate Investment	Overstatement of IS Invest.
(A)	(B)	(C)	(D=AxC)	(E=B-A)
$1,664	$366	21.28%	$354	$12

49. In the above table the result of our investigation is shown as a reduction in the carrier's allowed interstate allocation of gross investment. In order to translate this reduction in gross investment into a revenue requirement disallowance, we have developed a revenue requirement factor. The revenue requirement factor varies by study area, but for all Tier 1 carriers it averages to 0.24. Thus, a $10 million reduction in gross investment translates into a $2.4 million reduction in revenue requirement.[77]

50. The revenue requirement factor takes into account the effect that a reduction in gross investment has on plant-specific expenses, depreciation, tax, and return. The plant-specific expense component of the factor is based on the ratio of plant-specific expense to total plant in service.[78] For all Tier 1 carriers, the ratio averages 0.0689. We interpret this ratio to mean that a $10 million reduction in the allocation of gross investment to the interstate jurisdiction reduces the allocation of plant-related expense to the interstate jurisdiction by $689,000. We developed the depreciation component of the factor in a similar manner. The ratio of depreciation expense to total plant in service for Tier 1 carriers averages 0.083; therefore, a $10 million reduction in the allocation of gross investment to the interstate jurisdiction reduces interstate depreciation expense by $800,000.[79]

51. We developed the third component, tax and return, in two steps. First, we calculated a combined rate for tax and return. The current federal corporate income tax rate is 0.34, and the current rate of return prescribed by the Commission for the LECs is 0.12.[80] After allowing for the fact that only the equity portion of the rate of return is subject to the corporate tax rate,[81] the combined tax and return rate is 0.163.[82] Second, we adjusted for the fact that rate of return applies to net investment rather than gross investment. We developed a net investment figure by subtracting accumulated depreciation reserves and accumulated deferred operating income taxes from gross investment.[83] For all Tier 1 carriers, net investment was approximately 54.5 percent of gross investment. We multiplied this net investment factor times the combined tax and return rate of 0.163 to arrive at a gross investment tax and return factor. For Tier 1 carriers, this factor averaged 0.089.

52. Combining all three factors, we computed a revenue requirement factor for determining the revenue requirement disallowance associated with a reduction in the allowed interstate allocation of gross investment. The average for all Tier 1 carriers is 0.689 + 0.083 + 0.089 = 0.24. We believe that this factor accurately determines the reduction in revenue needed to reflect the required reductions in gross investment. For NET, application of this factor yields the following revenue requirement disallowance:

(in millions)

1988 Cat 3 Investment Disallowance	Revenue Requirement Factor	Rev. Requirement associated with Disallowance
(A)	(B)	(C=AxB)
$12	24.69%	$3

We are accordingly disallowing this amount.

III. COE CATEGORY 4.23 COSTS

A. *Introduction*

53. The *December 24 Order* found that various petitioners had presented substantial questions with respect to the accuracy of LEC cost and demand computations that reflect the application of separations rules and the projection of demand for voice grade special access circuits. The *Phase II Designation Order* designated for investigation questions relating to the computation of baseline separations factors, the projection of special access demand units, and the consistency of projected separations and ratemaking demand units. That Order also designated questions relating to the accuracy of New York Telephone data which will be examined separately. In Section III, we examine questions relating to the development of separations factors for COE Category 4.23 investment; in Section VI we consider questions relating to the projection of future separations factors, and the consistency between carriers' projections of investment and their projections of demand.

54. Circuit equipment is used not only to derive communications transmission channels, but also for the amplification, modulation, regeneration, testing, balancing, or control of signals transmitted over communications transmission channels. Some circuit equipment, such as line termination equipment, is located inside the central office; other circuit equipment, such as repeaters, is lo-

cated outside the central office.[84] In the former Part 67 Separations Manual, circuit equipment was included in COE Category 8.[85] The former COE Category 8.23, All Other Interexchange Circuit Equipment, was divided into basic and special circuit equipment. [86] Basic circuit equipment was further subdivided into six categories on the basis of circuit miles. The joint message subcategory was allocated between the jurisdictions on the basis of a distance-sensitive allocation factor, conversation-minute-miles (CMM).

55. The revised Separations Manual reclassified circuit equipment as COE Category 4 and changed the procedures applicable to All Other Interexchange Circuit Equipment, which is currently included in COE Category 4.23.[87] The new rules require that the LECs' investment in basic COE Category 4.23 be divided into four subcategories on the basis of a count of terminations.[88] Those subcategories are allocated as follows: (1) the joint message subcategory is allocated on the basis of a distance insensitive allocation factor, conversation-minutes (CM); (2) the interstate private line subcategory is directly assigned to the interstate jurisdiction; (3) the state private line subcategory is directly assigned to the state jurisdiction; and (4) the TWX subcategory is allocated on the basis of a distance insensitive allocation factor, connection-minutes.

56. The Joint Board examined 1984 data submitted in Docket No. 80-286 to determine the impact of this change. The Joint Board estimated that the implementation of the new COE Category 4.23 procedures by the LECs would result in a shift in revenue requirements to the interstate jurisdiction of $76 million.[89] In addition, the Docket 80-286 Joint Board clarified that, in counting terminations for the purpose of classifying COE Category 4.23 costs, the LECs must count both intermediate terminations and terminations at the ends of circuits.[90] Although this Commission adopted the Joint Board's recommendation,[91] the *Separations Reconsideration Order* revised the Separations Manual to require that the LECs count terminations only at the ends of circuits, pending the outcome of further inquiry into the separations procedures applicable to COE Category 4 by the Docket 80-286 Joint Board.[92] For the 1988 access tariff filings, however, the LECs were required to count both intermediate and end terminations to derive COE Category 4.23 interstate costs.

57. The *Phase II Designation Order* directed each LEC to explain its procedures for development of COE Category 4.23 investment and separations factors. 3 FCC Rcd at 3103-04. The Bureau directed each LEC to provide the projected total COE Category 4.23 investment and projected COE Category 4.23 separations factors that it used to develop its 1988 access rates, and the projected termination counts that it is using to derive projected separations factors. The Order required step-by-step explanations of the procedures used to derive projected quantities and factors, and explanations of the LEC's conclusion that the projected termination counts it uses to derive COE Category 4.23 interstate costs are consistent with the demand quantities it has used to compute special access rates. The Bureau also directed these LECs to demonstrate that the projected changes in unseparated COE Category 4.23 investment are consistent with projected changes in demand quantities. *Id.* at 3104. Finally, the *Phase II Designation Order* provided Attachment B as a format for data to be submitted as part of the direct case.

58. The requested data were submitted by the seven Bell Operating Companies (BOCs), Cincinnati Bell, GTOC, United, and SNET. Before allocating COE Category 4.23 investment between the state and interstate jurisdictions, the LECs are required to allocate such investment between the message and private line categories, based on the relative number of equivalent end and intermediate circuit terminations. In response to the *Phase II Designation Order*, the LECs submitted 1988 data showing the total number of equivalent circuit terminations for each study area under investigation.

B. *Summary of Pleadings*

1. Direct Cases

59. Ameritech states that in developing COE Category 4.23 costs it first identified total circuit equipment investment subject to separations, removed nonregulated investment and investment associated with the Shared Network Facility Agreements,[93] segregated and separately allocated those costs identified as being associated with the provision of equal access, and then separated into categories according to Part 36 of the Commission's rules those circuit equipment related costs that remained. Ameritech Direct Case at 5.[94] Ameritech placed the interexchange costs in Category 4.23 and developed an average interexchange circuit equipment cost figure per equivalent interexchange telephone termination for all circuits. *Id.* Ameritech applied that figure to the interexchange telephone termination count for each type of circuit -- interstate private line, intrastate private line, and message -- so that private line costs were directly assigned to the appropriate jurisdiction and message costs were apportioned between the jurisdictions based on the relative number of study area CMs. *Id.* at 6.

60. Bell Atlantic provides its baseline data and separations allocations factors in Exhibit C-1, and clarifies total unseparated circuit equipment, total circuit equipment, and percent of investment in Exhibit C-2. The relative percentages of COE Category 4.23 investment for each company reflect minor differences, according to Bell Atlantic. Bell Atlantic Direct Case at C-3. Further, Bell Atlantic posits, revised network cost characteristics resulting from updated studies of plant facilities may offset pure demand-related trends. *Id.*

61. Bell Atlantic states that it developed its termination counts from the records and data systems containing information on equipment characteristics and configuration of interexchange circuits in each company.[95] Bell Atlantic also asserts that the amount of investment that falls into COE Category 4.23 is dependent on the size of the exchange area and the engineering of the network. *Id.* at C-5.[96] Bell Atlantic thus contends that it is a matter of happenstance whether a particular special access facility uses interexchange circuit equipment. *Id.* Bell Atlantic avers that there is no reasonable basis on which to identify the special access interoffice services that use COE Category 4.23 investment. *Id.*

62. BellSouth explains that it has not changed the processes by which it determined COE Category 4.23 investment, as the same basis was used to develop former COE Category 8.23 investment. BellSouth Direct Case at 10.[97]

BellSouth states that it developed an average interexchange circuit equipment cost per interexchange telephone termination, pursuant to Section 36.126 of the Commission's rules, and applied this cost to the interexchange telephone termination counts by class of circuit. *Id.* BellSouth observes that application of the Part 36 rules has changed the allocations somewhat, since miles (used under Part 67) do not necessarily bear a direct relationship to termination counts (used under Part 36). *Id.* at 12. BellSouth also states that in calculating circuit terminations it counted all interexchange circuits which terminate in BellSouth-owned circuit equipment, including intermediate terminations. *Id.* at 13.

63. Cincinnati explains that it developed an average cost per equivalent interexchange termination by dividing the other interexchange investment by the total interexchange termination counts. Cincinnati Direct Case at 2-6. Cincinnati includes Fig. 2-7 to display the COE Category 4.23 prospective investment, the separations factors used to calculate the prospective investment, and the interexchange termination counts. Cincinnati states that it directly assigns interstate private line circuit investment to the interstate jurisdiction, and state private line circuit investment to the state jurisdiction. *Id.* It apportions joint message investment based on the applicable CMs.[98] Cincinnati notes that it allocates the interstate amount of Category 4.23 investment to the local transport and interexchange message because it provides interstate intraLATA message service. *Id.* at 2-7.

64. GTOC performs a circuit equipment basic study at each central office to determine the book costs to be assigned to each circuit equipment category. GTOC Direct Case at 9. Next, it determines the projected mid-year 1988 balance for COE Category 4.23, then applies the location-specific basic study percent distribution for COE Category 4.23 to the mid-1988 location investment to determine the projected COE Category 4.23 investment. *Id.* at 10.[99]

65. Nevada Bell states that it maintains continuing property records (CPR) which contain an inventory by location of categorized COE investment. Nevada Bell Direct Case at 5. The investment is disaggregated to subcategories using information obtained from the interoffice circuit inventory, which maintains information on circuit identification number, routing and mileage, and types of facilities and equipment used for each working circuit. *Id.* at 5-6. Each circuit is associated with a separations category and with the type of equipment used to provision the circuit, Nevada Bell explains. *Id.* at 6.

66. Nevada Bell apportions COE Category 4.23 investment to message, TWX, and state and interstate private line services on the basis of interexchange telephone termination counts, and further allocates the message investment to jurisdictions based on relative CM.[100] Nevada Bell bills channel mileage terminations on the basis of two terminations for each special access circuit; separations terminations are a count of terminations at each end of a circuit and are obtained from the interoffice circuit inventory, Nevada Bell clarifies. *Id.* Intermediate points are counted as terminations. *Id.* at 7. Nevada Bell developed a baseline ratio by comparing the two counts, and applied it to forecast special access terminations to estimate separations terminations counts. *Id.* and Exhibit 5. Nevada Bell explains that it develops CM using its originating and terminating minutes by trunk group from the Bell Communications Research, Inc. Samples Traffic Analysis and Reports System (STARS) Report 002; its calculations are detailed in Exhibit 6. *Id.*

67. NYT states that it calculated total projected COE Category 4 investment underlying its Phase II direct case, and applied the Circuit Equipment Basic Study factor for COE Category 4.23. NYT Direct Case at 12.[101] NYT explains that equal access investment is treated with its own separations factor, and costs are recovered under the equal access cost recovery procedures. NYT details its methodology in conforming its common equipment adjustment to Part 36, Section 36.121(c). *Id.* at 12-13. NYT explains that it uses statistical samples, and includes as Exhibit III.1 a showing of the development of the unseparated COE Category 4.23 investment for the projected period. *Id.* at 13. NYT states that, although demand plays a vital role in the construction expenditure budget, other factors, such as upgrading existing facilities and improving services, influence NYT expenditures. *Id.* at 14.

68. NYT notes that it performs basic studies to develop an average book cost per interexchange telephone termination for all circuits, and applies this average cost to the interexchange telephone termination count for each of the classes of circuits. *Id.* These investment figures for interstate and intrastate private line terminations are assigned directly to the interstate and intrastate operations, respectively. *Id.* The remaining investment is apportioned between intrastate and interstate operations on the basis of the relative number of study area CMs applicable to such facilities, NYT explains. *Id.* at 15.

69. NYT details its circuit termination calculations, *id.*,[102] and states that it projects three classes of terminations: special access interstate, special access intrastate, and joint message. *Id.* at 16.[103] NYT describes its CM calculations, and details its hypothetical 1987 COE Category 4.23 data. *Id.* at 18. New England Telephone makes a showing very similar to that made by NYT. *See* NET Direct Case at 8-16.

70. Pacific Bell appends Attachment B to respond to the *Phase II Designation Order* request for COE Category 4.23 data and clarification, and Attachment F to illustrate the effect of Part 36 rule changes on COE Category 4.23 investment relationships. Pacific Bell Direct Case at 7. Pacific Bell describes the step-by-step procedure by which it develops its COE Category 4.23 separations.[104] It uses an interstate CM factor as its COE Category 4.23 separations factor.[105]

71. Southwestern Bell asserts that it has properly calculated unseparated COE Category 4.23 investment using the Access Charge Analysis System 87 (ACAS 87). SWB Direct Case at 11. It describes using the first two modules, historical data and vertical expansion, to develop projected investment. It demonstrates the relationship between historical COE Category 8.23 investment and projected COE Category 4.23 investment. *Id.* at 12. SWB then discusses the separations factors used to allocate COE Category 4.23, including conversation minutes and interexchange circuit terminations (including intermediate terminations). *Id.* at 12-13.[106] SWB notes that it is unable to provide separate counts of end and intermediate terminations. *Id.* at 14.[107]

72. United states that it develops COE Category 4.23 investment by defining equipment types as either directly assignable to, or jointly used for, private line and message services and state and interstate jurisdictions, then assigning the categorized investment pursuant to Part 36 to the

appropriate service and jurisdiction by direct assignment or allocation. United Direct Case at 6.[108] CM and terminations are used to allocate and apportion COE circuit equipment. *Id.* at 7. United asserts that it has been conservative in cost projections to prevent overallocations of costs and underforecasts of demand. *Id.* at 9.

73. US West explains that its procedures for forecasting 1988 interstate COE Category 4.23 investment consist of categorizing investment and apportioning the categorized investment into jurisdictions by projected separations factors. US West Direct Case at 11. First US West disaggregates total COE investment into separations categories by distributing them into Categories 1 through 8 in the same relative proportions as the first four months of 1987. Then US West places former COE Category 8 and its subcategories in exchange and interexchange groups. *Id.* at 12. The former COE Category 8.23 equals COE Category 4.23, according to US West. *Id.* US West developes an average interexchange circuit equipment investment per equivalent interexchange termination by dividing prospective COE Category 4.23 investment by the prospective interexchange terminations. *Id.* at 13.[109] US West COE Category 4.23 investment is directly assigned, then the interexchange investment for jointly used message circuits is apportioned to the appropriate jurisdictions on the basis of the CM ratios. *Id.* US West declares that the use of the CM factor and the replacement of circuit mileage with circuit termination counts produced an increase in the assignment to the interstate jurisdiction. *Id.* at 13-14.[110]

2. Oppositions

74. Ad Hoc charges that Ameritech, Bell Atlantic, NET, and US West have failed to explain how multiplexed Hi-Cap channels are reflected in cost assignments and, in particular, whether such channels are assigned as some multiple of VG equivalencies. *Id.* at 9-10 (citing *Phase II Designation Order*, 3 FCC Rcd at 3105 & n.12). Ad Hoc states that these LECs have failed to respond to the Bureau's directive, and argues that the increasing use of Hi-Cap special access facilities means that the separations methods used to allocate the costs associated with such facilities will become increasingly important. *Id.* Ad Hoc mentions the possibility of overt cross-subsidization, which it asserts exists even if the rates for Hi-Cap services are themselves reasonably cost-based. *Id.* at 10-18. Ad Hoc argues that the Commission should require new Hi-Cap filings. *Id.* at 18.

75. AT&T states that it appears that many LECs have overassigned COE Category 4.23 costs to the interstate jurisdiction. AT&T Comments at 29. Supporting this contention, according to AT&T, are LEC data submitted to the Joint Board estimating that the assignment of such investment to the interstate jurisdiction would increase the interstate revenue requirements of Tier 1 and Tier 2 LECs by $76 million. *Id.* at 30 (citing *COE Recommended Decision and Order*, Table D). AT&T alleges overassignment to the interstate jurisdiction specifically by Pacific Bell ($78 million), Bell Atlantic ($62 million), and GTOC ($12 million), due to errors in these carriers' calculations of their interstate CM factors. *Id.*[111]

76. Ad Hoc also argues that most of the BOCs fail to explain how they derive termination counts. Ad Hoc Opposition at 25. AT&T contends that GTOC, while acknowledging that Part 36 requires the inclusion of intermediate facility termination points, indicates that it did not count intermediate terminations in separating its Category 4.23 costs. AT&T Comments at 33-34 (citing GTOC Direct Case at 11). Ad Hoc asserts that the Commission's rules do not permit a carrier arbitrarily to exclude selected terminations from its termination counts. Ad Hoc Opposition at 26-27.[112]

77. Further, Ad Hoc asserts that what facilities are counted as intermediate terminations appears to vary among the BOCs. *Id.*[113] AT&T charges GTOC with such variations, noting that GTOC of the Northwest assumes 1.6 private line terminations per private line loop, while GTOC of California assumes a one-to-one ratio. AT&T Comments at 34-35.[114] Ad Hoc cites the miscount of terminations recorded by the Chesapeake and Potomac Telephone Company of the District of Columbia. Ad Hoc Opposition at 26-27 (citing Bell Atlantic Direct Case at Exhibit C-5 DC). Further, AT&T asserts, no LEC provides the count of intermediate terminations used in separating COE Category 4.23 costs, as required by the *Phase II Designation Order* at Attachment B. AT&T Comments at 35. AT&T argues also that the LECs have failed to explain their direct assignments of costs.[115] Further, AT&T charges the LECs with internal inconsistency.

3. Rebuttals

78. Regarding AT&T's challenges addressing direct assignments and Ad Hoc's complaint that it has used different per termination average investment figures in separating COE Category 4.23 amounts, Ameritech responds that the apparent problem is an easily resolved lack of clarity in its direct case Attachment B, and that the cost per circuit termination is in fact the same for all classifications. Ameritech Rebuttal at 8-10 (citing AT&T Comments at 34, Ad Hoc Opposition at 29-33).[116] US West disputes Ad Hoc's charge that it shows significant unexplained variations among study areas for average cost per termination. US West Rebuttal at 10 (citing Ad Hoc Opposition at 41, 43-44). US West asserts that the consistency Ad Hoc seeks does not exist in fact, and that the variation is attributable to differences in network configuration, diversity in geography, population distribution, and variations in levels of demand for particular services. *Id.* at 10-11. Southwestern Bell states that it has fully explained its direct assignments, having displayed the circuit miles and termination counts used to assign the basic circuit equipment investment to the intrastate and interstate jurisdictions for both message and private line. Southwestern Bell Rebuttal at 9 (referring to its direct case Attachment B).

79. Bell Atlantic states that it has, contrary to AT&T's charges, included minutes of use associated with directly assigned message circuits in its calculations. Bell Atlantic Rebuttal at Appendix C-3 (citing AT&T Comments at 30). Bell Atlantic asserts that AT&T assumes that COE Category 4.23 investment is assigned in part based on mileage, but that in fact it is not. *Id.*[117] Bell Atlantic responds to AT&T's charge that its allocation of COE Category 4.23 investment in New Jersey is overstated by more than $9 million. *Id.* at C-4.[118] GTOC reaffirms its calculation of the CM factor as including total interexchange CM for COE Category 4.23, contrary to AT&T's charge. GTOC Rebuttal at 9 (citing AT&T Comments at 30-31). GTOC asserts that this undercuts AT&T's entire challenge. NYNEX responds to a similar AT&T argument by stating that NET did include in its CM factors the CM associated

with all joint message circuits, including those circuits that it had previously directly assigned. NYNEX Rebuttal at 16 (citing AT&T Comments at 30-31).[119]

80. Pacific Bell, too, disputes AT&T's criticism, stating that it included all CM on both jointly used facilities and those facilities which were previously directly assigned. Pacific Bell Rebuttal at 11-12. US West states that it included the termination counts for interstate message and state message in its jointly used message counts. US West Rebuttal at 8-9.[120] US West asserts that it developed a single average cost per termination in allocating COE Category 4.23 costs to jurisdictions; this was applied in each study area, and disproves Ad Hoc's charge of an overassignment of $13 million to interstate private line, US West asserts. *Id.*

81. AT&T and Ad Hoc charged several carriers with failing to provide intermediate termination counts or to clarify how terminations were counted. AT&T Comments at 35-36; Ad Hoc Opposition at 27-28. Ameritech responds that it counts both end and intermediate terminations for use in the separations process, and makes no effort to separate them because it has no reason to do so. Ameritech Rebuttal at 10. BellSouth reiterates that it developes termination counts from engineering records of interexchange circuits, and that all terminations are counted. BellSouth Rebuttal at 17. BellSouth states that it counts the equivalent interexchange terminations at the network point where the signal is brought down to the voice grade level. *Id.*[121] GTOC concedes that it did not count intermediate terminations in separating its COE Category 4.23 costs, and states that it so informed the Bureau in November 1987. GTOC Rebuttal at 11-12. It states that its methods were reasonable under the circumstances. *Id.*[122] GTOC asserts that, despite variations among the GTOC companies in their termination projections, each company determined a factor reflecting the number of terminations per loop, and that the procedures for each company are reasonable. *Id.* at 13.

82. NYNEX argues that it explained fully, in its NYT and NET direct cases, how it counts terminations. NYNEX Rebuttal at 13 (citing NYT Direct Case at 14-16 NET Direct Case at 10-13).[123] Southwestern Bell argues that it included in its direct case a full explanation of its termination counts, including a description of the use of TIRKS to identify both end and intermediate terminations. Southwestern Bell Rebuttal at 9.[124] US West contends that it explained fully, in its direct case, its methodologies for counting end and intermediate terminations. US West Rebuttal at 12. US West also reiterates that its current processes do not allow for discrete reporting of intermediate terminations as separate from end terminations, and that such separation was submitted in the Joint Board proceeding in September 1986 only as the result of a one-time special effort that required the reprogramming of the data base, and is not required by the Commission for access tariff filings. *Id.* at 13.

83. Ad Hoc objected to various LECs' use of weighting factors for multiplexing. Ad Hoc Opposition at 34-36. Ameritech replies that the objection arises from a misunderstanding of its surrogate methodology. Ameritech Rebuttal at 11. Ameritech states that Hi-Cap investment is directly assigned in the separations process, so VG equivalencies are not used to separate those costs; instead, the equipment determines the category and the jurisdictional assignment of costs. *Id.*[125] In its COE Category 4.23 cost development surrogate methodology, Ameritech did use a Hi-Cap-to-VG factor to reflect changes in projected demand, however. The percentage of analog investment in COE Category 4.23 was then determined by calculating the relative amount of analog non-zero mile circuit demand to total non-zero mile circuit demand. *Id.* at 11-12. Ameritech asserts that Ad Hoc has failed to include in its calculations the significant cost of multiplexing equipment – up to 70 percent of Hi-Cap unit costs. *Id.* at 12. Further, Ameritech disputes Ad Hoc's contention that Ameritech's methods result in double-counting multiplexing investment. *Id.*[126] NYNEX notes that DS-3 service multiplexers are COE Category 4.23 equipment, but, as high-level multiplexing equipment, are included in the COE Category 4.23 average book cost per termination. NYNEX Rebuttal at 15.

84. Ad Hoc also asserted that Ameritech allocated Hi-Cap investment between jurisdictions twice, once by direct assignment and once by allocation according to termination counts. Ad Hoc Opposition at 37-38. Ameritech responds that it allocates Hi-Cap costs once; it erroneously placed Hi-Cap investment in COE Category 4.23, commingled with analog circuit investment and allocated based on the number of analog circuit terminations. Ameritech Rebuttal at 14. Ameritech states that it corrected this error, however, by using its surrogate methodology to segregate the Hi-Cap investment from COE Category 4.23 before adjusting investment levels for prospective demand. *Id.*[127]

C. *Discussion*

85. Except for the discrepancies discussed below, LEC circuit equipment appears to be categorized and apportioned in conformance with the Part 36 Rules. In addition to examining these data and the procedural explanations set forth in the LECs' direct cases, we also studied the numerous issues raised in the oppositions. We believe that most of these issues are adequately addressed by the LECs' rebuttals or by the information provided in their direct cases.[128]

1. Improper Cost Categorization

86. The GTOC data support AT&T's claim that GTOC mistakenly allocated COE Category 4.23 investment to service classes on the basis of end terminations instead of total terminations. In response to questions by Bureau staff, GTOC states that it counted only end terminations, not intermediate terminations, during 1987.[129] For this reason, GTOC believes the process of extracting intermediate counts from the 1987 data, which are the basis for the submitted end-termination counts, could not be completed for several weeks. GTOC states that, because it became aware of this error in September 1987, it has been recording the number of total terminations throughout the first half of 1988. GTOC further states that, as of September 6, 1988, it will be able to subdivide these study area totals into two subcategories, "intermediate terminations" and "end terminations."

87. Because these 1988 actuals data are not only more readily available but also more accurate than the 1987-based projections, we believe the 1988 actuals data should be the basis of any rate adjustments needed to correct this error in cost categorization. We therefore direct GTOC to submit, within ten days of the release of this Order, actual cost and terminations data by study area for the first six months of 1988. Such data should include the information needed for a proper adjustment of the

rates. Specifically, GTOC should identify, based on the most recent data available, the amount of COE Category 4.23 investment, the number of equivalent-circuit end terminations and intermediate terminations, and the corresponding interstate CM factor. When we determine the GTOC disallowance, if any, that is required to correct this error, we will issue a supplemental order in this proceeding.

2. Incomplete Terminations Data

88. All LECs except GTOC have submitted the requested counts of total number of equivalent circuit terminations. And all but one of them state that these termination totals include both end and intermediate terminations.[130] Yet, as AT&T correctly observes, none of these LECs segregated the number of total terminations into "end" and "intermediate" subtotals as required by the *Phase II Designation Order*.[131]

89. In response to a request by Bureau staff for this missing breakdown, only SNET submitted such data,[132] which appear to be consistent with the cost categorization rules. All of the remaining LECs responded that their records do not distinguish between end and intermediate terminations. This distinction was unnecessary, they stated, because the categorization of 1988 costs is not based on either of these measures but, rather, on the two measures combined. These LECs further stated that the process of rewriting a software program to identify separately the number of end terminations and the number of intermediate terminations would be burdensome and would require several weeks for completion. Although we have been able to resolve the questions in this investigation without this information, we note that carriers who believe that responses to Designation Order inquiries are impossible or unduly burdensome should request a waiver.

90. Neither the data submitted by the LECs nor the arguments submitted in oppositions indicate that any LEC incorrectly defines "intermediate termination." Nonetheless, we share Ad Hoc's concern that, due to the rapid technological changes in circuit and switching equipment, a consensus on the proper definition of this term does not appear to exist in the LEC industry. The Docket 80-286 Joint Board is currently seeking such a definition in a separate proceeding devoted to reexamining the separations rules for Cable and Wire Facilities and COE Category 4.23.[133]

3. Incorrect Jurisdictional Allocation

91. We share AT&T's concern that some companies have overassigned costs to the interstate jurisdiction by miscalculating the interstate CM factors which are the basis of jurisdictional allocation. The 1988 CM data that Pacific Bell and the Bell Atlantic, NYNEX, and the GTE Companies submitted in this proceeding are difficult to reconcile with the 1987 CM data submitted for the same study areas in Docket 80-286.[134] Since 1988 message costs include substantial amounts of COE Category 4.23 costs that were directly assigned in 1987, a certain amount of change in the state/interstate ratio of CM is to be expected between these two years. Some of the results are not consistent with that expectation.

92. In the California study area, for example, the interstate portion of joint message CM was 27.8 percent in 1987 and 27.3 percent in 1988, according to Pacific Bell's data. We do not understand why the interstate portion of joint message CM usage is virtually the same in both of these years. We note that, in 1987, Pacific Bell directly assigned nearly 38 percent of its total message costs to state operations[135] and placed nearly all of the remaining message costs in the joint message category. Yet when Pacific Bell added these state message costs to the joint message category in 1988, the share of joint message usage attributable to interstate operations was barely affected. This result is extremely unlikely, given that Pacific Bell's joint message costs are nearly doubled by this reclassification and that almost all of this cost increase is due to a shift in costs previously attributed to state operations. This reclassification of separated costs increases the interstate assignment for total message costs by 36 percent, or about $64 million, while the state assignment for such costs increases by only 0.6 percent, or less than $4 million.

93. The Bell Atlantic data indicate that, in New Jersey, the interstate portion of joint message costs would have fallen from about 65 percent to 57 percent in 1987 if the new CM factor had been implemented a year earlier. These data also show, however, that when this factor was implemented in 1988, the interstate portion of joint message costs actually increased by about 24 percent while the state portion of these costs increased by less than 6 percent. This inexplicable increase in the interstate assignment does not appear to be explained by the reclassification of the directly assigned costs as "joint message costs," because Bell Atlantic had directly assigned about 90 percent of those reclassified costs to state operations in 1987.

94. The NYT data indicate that, in New York, the interstate portion of joint message costs would have increased from 52 percent to 58 percent in 1987 if the new CM factor had been implemented that year. That is, the interstate assignment for such costs would have increased about 12 percent. These data also show, however, that when this factor was implemented in 1988, the interstate portion of joint message costs increased not by the expected 12 percent but, rather, by 27 percent. In contrast, the state portion of these costs decreased by about 1 percent. This unexpected increase in the interstate portion and reduction in the state portion does not seem to be explained by NYT's reclassification of the directly assigned costs as "joint message costs," because NYT had assigned nearly 60 percent of those reclassified costs to state operations in 1987.

95. The NET data show that, in Massachusetts, the interstate portion of joint message costs would have decreased from 51 percent to 42 percent in 1987 if the new CM factor had been implemented that year. These data also show that, when this factor was implemented in 1988, the interstate portion of these costs was actually 41 percent, a figure that is virtually unchanged from the 1987 figure. Such consistency would be reasonable if the portion of total message costs subject to the allocation factor were approximately the same for both years, but that is not the case. Whereas 35 percent of message costs were allocated instead of directly assigned in 1987, all message costs are allocated in 1988.[136] It is inexplicable that the interstate portion of total CM would remain virtually unchanged when NET chose to allocate fully messages cost in 1988. Moreover, we observe similar anomalies in the data submitted by GTOC.

96. Although it is not possible to compute the precise effects of these errors in the apportionment of message circuit equipment costs, we estimated these effects by using a surrogate methodology to correct the overstatement of interstate costs. Specifically, we used the percentages of such costs that were directly assigned to state and interstate operations in 1987 as surrogates for the percentages of costs that could be directly assigned to each jurisdiction in 1988. We allocated the remaining unassigned costs based on the portion of the CM counts that these companies attributed to interstate operations in 1987. In this way, we used the interstate portions of 1987 CM counts as surrogates for the appropriate 1988 interstate CM factors for each of the affected study areas. We conclude that the difference between the projected 1988 interstate message COE Category 4.23 costs and our estimates of such costs should be disallowed for Pacific Bell and the Bell Atlantic, NYNEX and GTOC companies. The disallowance for each of those companies is set forth in Attachment D.

IV. CABLE AND WIRE FACILITIES COSTS

A. *Introduction*

97. At the same time the Docket 80-286 Joint Board recommended revision of the separations procedures applicable to COE, the Docket 86-297 Joint Board recommended revision of the Separations Manual to conform the separations rules to the revised Uniform System of Accounts (USOA) and to simplify separations procedures.[137] In adopting the recommendations of the Docket 86-297 Joint Board, the Commission reclassified the investment in the former Outside Plant categories as Cable and Wire Facilities (C&WF).[138] In the Part 36 Separations Manual, C&WF is subdivided into four categories of plant. 47 C.F.R. § 36.152. Category 1, Exchange Line C&WF, is segregated into three subcategories which are allocated as follows: (1) state private line and WATS are directly assigned to the state jurisdiction; (2) interstate private line and WATS are directly assigned to the interstate jurisdiction; and (3) subscriber line or common lines jointly used for exchange services and interexchange access are allocated on the basis of the phased-in 25 percent basic allocation factor. 47 C.F.R. § 36.154.

98. C&WF Category 1 investment is apportioned on the basis of the LEC's average cost per working loop. 47 C.F.R. § 36.154(a). Thus, a count of loops is a critical part of an accurate allocation of these costs. The costs in Category 2, Wideband and Exchange Trunk C&WF, are directly assigned whenever feasible, and in other cases are allocated on the basis of relative number of minutes of use. 47 C.F.R. § 36.155. The investment in Category 3, Interexchange C&WF, is directly assigned whenever feasible, and in other cases is allocated on the basis of CMM, as applied to each class of circuit. [139] The costs in Category 4, Host/Remote Message C&WF, except for WATS closed end access lines, are apportioned on the basis of the relative number of minutes of use applicable to such facilities.[140]

99. Questions relating to the development of projected C&WF separations factors are discussed in Part V. Most questions relating to methodologies used by the LECs are discussed in this part. Data development questions that are unique to NYT are discussed in Part XII.

100. The *Phase II Designation Order* required that certain LECs provide former Part 67 and hypothetical Part 36 baseline separations factors and explain the methods used to implement the new rules. That Order also required that, if the Phase I filings or other submissions revealed that other LECs used different methods to derive separations factors or demand units or to achieve consistency between cost and demand units, the LECs filing direct cases on this issue must explain why they believe their methods will produce results that are more accurate than the alternative methods described by other LECs. The Order also required that, for C&WF Category 2, Wideband and Exchange Trunk C&WF; COE Category 4.11, Wideband Exchange Line Circuit Equipment; COE Category 4.12, Exchange Trunk Circuit Equipment (Wideband and Nonwideband); and COE Category 4.22, Interexchange Circuit Equipment Used for Wideband Services, filing carriers must explain how multiplexed Hi-Cap channels are reflected in cost assignments and, in particular, whether such channels are assigned as some multiple of voice grade equivalents. 3 FCC Rcd at 3103-04.

B. *Summary of Pleadings*

1. Direct Cases

101. Ameritech provides the requested C&WF data in Attachment C, and describes its methodologies as follows: it used historical counts to develop relative loop counts, numbers of circuits, circuit miles, conversation minutes, and minutes of use to separate C&WF costs jurisdictionally. Ameritech Direct Case at 12. Bell Atlantic refers to and attaches its detailed baseline and projection information from its Phase I direct case. Bell Atlantic Phase II Direct Case at App. D-1. It also attaches as Exhibit D-2 its response to the *Phase II Designation Order* Attachment C. Bell Atlantic states that its apportionment methodologies remain virtually unchanged from Part 67.[141] Bell Atlantic asserts that it has developed its methodology to fit its available data sources, operating characteristics, and service mix. *Id.* at D-3.

102. BellSouth provides the requested C&WF data in its direct case at Attachment C. BellSouth states that it has attempted to assure consistency between its apportionment to C&WF categories and its allocation to the interstate jurisdiction. *Id.* at 16. BellSouth made its apportionments based on direct assignment when possible, and otherwise on historical characteristics. *Id.* BellSouth discusses its use of weighting factors in C&WF Category 1 and Category 2 calculations. *Id.* at 21-22, referring to BellSouth Annual 1988 Access Tariff Filing at Vol. 3, Section 6, Form S-5A. BellSouth considers the use of VG equivalencies for multiplexed facilities, and notes that it assigned costs of multiplexed facilities based upon their physical costs rather than by using equivalencies. *Id.* at 22-23. BellSouth concludes that the overall change in special access revenue requirements resulted from changes in special access demand and the impact of the numerous rule changes. *Id.* at 23.

103. Cincinnati reviews each category of C&WF data: for Category 1, Cincinnati developed an average C&WF cost per working loop, then developed investment data based on direct assignment when possible, otherwise by allocation using the basic allocation factor (BAF) pursuant to Section 36.154(d), (e), and (f) of the Commission's rules. *Id.* at 2-8. For Category 2, Cincinnati states, it

assigned costs directly based on the OSP basic study, or apportioned jurisdictionally based on relative minutes of use. *Id.* at 2-9, referring to Fig. 2-11. In the OSP basic study, Cincinnati developed an average cost per equivalent interexchange telephone circuit mile for all circuits in Category 3. Cincinnati applied this average cost to each class of circuit mileage. *Id.* at 2-9 to 2-10.[142]

104. Cincinnati defends its methodology as promoting consistency between the two types of demand by stating that its basic study factors are consistent with the monthly data used for separations, and both are obtained from the same data base source. *Id.* Cincinnati states that its special access investment increase of about $660,000, adjusted to reflect the impact of its new outside plant basic study, is an increase of 5.37 percent, compared with an interexchange mileage increase of 5.32 percent. *Id.* at 2-11. Cincinnati asserts that it reflects Hi-Cap channels by treating only the loops and actual route miles (if multiplexed by the customer), or loops, mileage, and circuit equipment (if multiplexed by Cincinnati). *Id.* at 2-11 to 2-12.

105. GTOC presents C&WF data in its direct case at Attachment C.1. GTOC states that Part 36 does not change any of the C&WF apportionment methods, but distributes dollar amounts among different categories. GTOC developed an average cost per loop for total C&WF Category 1 cost. GTOC Direct Case at 13. Wideband loop costs were assigned to C&WF Category 2. Projected costs for C&WF Category 2 services were developed separately by multiplying the projected units by a basic cost per unit. *Id.* C&WF Category 3 costs were developed by multiplying the average cost per interexchange circuit mile from a basic study by the projected circuit miles plus amounts directly assigned. *Id.*[143] C&WF Category 4 costs were developed by applying a cost per host/remote circuit mile from a basic study to the projected circuit miles.[144] GTOC defends its methodologies as promoting consistency between loop counts and projected demand units. *Id.* at 16.[145]

106. Pacific Bell supplies the requested data in its direct case at Attachment C and Attachment H. Regarding multiplexed Hi-Cap services, it states that to assign C&WF Category 2 costs to the interstate jurisdiction, it multiplied the multiplexed Hi-Cap system channel miles for interstate private line by the average book cost per interstate wideband mile. *Id.* at 11-12. SNET asserts that its October 1987 filing detailed the methods and procedures it uses for categorization of C&WF expenses. *Id.* at 12 (citing SNET October 1987 filing at Appendices A & B). SWB states that its methodology for C&WF investment is similar to the methodology it uses for COE Category 4.23 investment. SWB Direct Case at 18. SWB used the historical relationships for Part 67 OSP investment to develop the unseparated C&WF investment. *Id.* SWB discusses its use of separations factors to allocate C&WF investment pursuant to the Commission's rules, and notes that its Attachment C contains the specific C&WF data requested by the *Phase II Designation Order*. *Id.* at 19.

2. Oppositions

107. MCI and AT&T charge that NYT's rates are inflated because they do not reflect reduced C&WF investment costs. AT&T Comments at 17; MCI Opposition at 17.[146] AT&T also challenges Bell Atlantic's rates. *Id.*[147] Ad Hoc charges Bell Atlantic with having used different, and unsupported, methodologies among its various companies, and with having significantly overstated private line interstate investment. *Id.* at 51. Finally, Ad Hoc states that Bell Atlantic is the only BOC to show consistent increases – both absolute and relative – among its operating companies in the level of C&WF Category 2 private line interstate investment. *Id.* at 52.

108. Ad Hoc also challenges NET's "manipulations" of its separations factors, stating that NET uses a composite growth factor that combines wideband and nonwideband service loops, even though wideband exchange plant has been removed from C&WF Category 1. Ad Hoc Opposition at 53.[148] Ad Hoc also disputes Ameritech's use of weighting factors and growth factors which, according to Ad Hoc, are unsupported and unverifiable. *Id.* at 54.[149]

3. Rebuttals

109. Ameritech defends its showing on C&WF methodologies as adequate. Ameritech Rebuttal at 16. Ameritech expresses its intention to correct its Hi-Cap investment listing, placing it in C&WF Category 2 rather than Category 3, but states that this error did not influence the interstate assignment to special access investment. *Id.* Ameritech states also that it does not use VG equivalencies in separations to develop costs for multiplexed Hi-Cap channels, but that the use of these facilities determines their categorization. *Id.*

110. Bell Atlantic also denies allegations in the oppositions. Bell Atlantic Rebuttal at Appendix D. Bell Atlantic does concede, however, that its New Jersey showing for C&WF private line investment is overstated because New Jersey miscategorized private line exchange trunk investment as exchange loop investment. *Id.* Bell Atlantic states that this miscategorization has no effect on special access revenue requirement. *Id.* Bell Atlantic also discusses its methodology for assigning costs associated with Hi-Cap circuits. *Id.* at D-2.

4. *Ex Parte* Responses

111. Data submitted by three companies show the jurisdictional allocation of C&WF Category 3 joint message investment to be inconsistent with the CMM allocation factor. These errors are substantial, ranging from 5 percent to 30 percent of the C&WF Category 3 investment. In response to questions by Bureau staff, these companies maintain that the separated investment data are correct, and attribute the discrepancies to inadvertent errors in the submitted CMM data, for which they submit corrections.[150] Specifically, Bellsouth states that it mistakenly submitted CM data instead of CMM data for its Georgia, North Carolina, and South Carolina study areas. NYNEX states that, for its New York study area, it mistakenly submitted the CMM factor for C&WF Category 4 instead of C&WF Category 3. US West explains that the CMM factor for South Dakota was inadvertantly submitted as the CMM factor for North Dakota as well as South Dakota.

112. Moreover, the data submitted by five companies – Ameritech, Bell Atlantic, GTOC, NYNEX, and United – show the cost categorization of investment in C&WF Category 1, Subscriber Line, to be inconsistent with the prescribed allocation factor, the relative number of working loops, in 30 study areas. In each of these study areas, the allocation of this investment between the message and private line service classes exhibits a different relationship than is shown by the respective loop counts for these

service classes. The submitted loop data indicate that the amounts of Subscriber Line investment assigned to message service in these study areas are overstated or understated by approximately 1 to 4.6 percent. Because these amounts of message class investment range from about $200 million to $2,340 million for most of these 30 study areas, the errors affect substantial amounts of investment. We accordingly asked those carriers for clarification, correction, or explanation. In response to questions from Bureau staff, all five companies have provided corrected data and have attributed the discrepancies to inadvertent errors, which in their view do not significantly affect the jurisdictional allocation of this investment.[151]

113. In the five Ameritech study areas, the discrepancies between the distribution of investment and the distribution of loops range from about 1 percent to 2.4 percent. Ameritech states that its C&WF Category 1 loops data mistakenly include private line trunks data that belong in C&WF Category 2. Ameritech observes that this error does not affect the Common Line element rates in four of its five study areas, because this mistake did not occur in the data on which the 1988 annual filings were based.[152] As to the fifth study area, Wisconsin, Ameritech acknowledges that this misclassification does affect the rates. Specifically, Ameritech acknowledges that this error causes C&WF Category 1 gross investment to be overstated by approximately $31.7 million, and C&WF Category 2 gross investment to be understated by the same amount. Ameritech further acknowledges that, as a consequence of this mistake, the amount of gross investment attributed to interstate operations is overstated by $8.2 million for C&WF Category 1 and is understated by $6.5 million for C&WF Category 2. The total effect of these two errors, it states, is a $1.7 million overstatement of the interstate assignment for C&WF Categories 1 and 2 combined. Ameritech nonetheless claims that, because this amount is small relative to the total amount of gross investment assigned to interstate operations in Wisconsin, this misclassification has only a minimal effect on access charges.

114. Moreover, in response to our request for additional loops data, Ameritech submitted a second *ex parte* statement showing the actual number of interstate special access loops for the first six months of 1988.[153] This latter filing shows 10 percent fewer actual interstate special access loops than was projected by Ameritech in its revised projections. Ameritech's actual investment in interstate special access loops was $35 million (or 13.7 percent) less than its projected investment.[154]

115. According to Bell Atlantic, the 2.3 percent discrepancy in its data for its District of Columbia study area is due to the miscategorization of interstate private line wideband investment as C&WF Category 1 rather than C&WF Category 2.

116. In 15 of the GTOC study areas, the discrepancies range from .9 percent to 4.6 percent of message class investment. GTOC states that these inconsistencies are due to three types of errors: the first error affects data in all of GTOC's study areas except Hawaii. GTOC omitted local private line loop counts that should be included in the private line state totals. The second error, GTOC states, is incorrect data entry, which affects the investment figures in nine study areas. The third error, which according to GTOC affects only the California and Hawaii study areas, is the improper inclusion of wideband loops in the loop counts used as the basis for allocating C&WF Category 1 among the state private line, interstate private line, and message classes. GTOC indicates that the first two types of error occur only in the data submitted with its direct case, not in the data on which its 1988 access charge cost study was based. GTOC concedes, however, that the third error did affect its access charge cost study, causing the interstate revenue requirement to be overstated by $83,000 in California and by $22,000 in Hawaii.

117. In the five New England study areas, the discrepancies range from about 2.1 percent to 4.3 percent of the C&WF Category 1 message investment. NYNEX attributes these errors to the mistaken inclusion of some C&WF Category 1 state private line investment in the data identified as C&WF Category 1 message investment. NYNEX acknowledges that a similar problem exists in the C&WF Category 2 data. Moreover, it states that the subscriber loop data for these five study areas contain inadvertent errors. NYNEX concludes that, because all of these discrepancies are posting errors that occur only in the submitted data, such mistakes do not affect the data on which the 1988 filings were based.

118. United explains that the submitted count of private line state loops in the Carolina, Indiana, Tennessee, and Virginia study areas mistakenly includes loops that should have been classified as message exchange loops. United further explains that, for its Florida study area, the submitted count of message loops jointly used for exchange and toll services should have included loops that were erroneously classified as host/remote loops.

C. *Discussion*

119. Based on our analysis of these *ex parte* submissions, we believe the corrected CM and CMM data submitted by these companies for C&WF Categories 1 and 3 are reasonably accurate for virtually all study areas. With the exception of GTOC and Wisconsin Bell, all of these companies have submitted revised CM and CMM factors that are consistent with the separated investment data on which their tariffs are based. GTOC's remaining discrepancies, which affect only 2 of its 29 study areas, are too small to warrant any adjustment. Wisconsin Bell's remaining discrepancies, however, are more substantial. We therefore are disallowing $1.76 million in Wisconsin Bell's interstate gross investment in C&WF Categories 1 and 2 combined, which it acknowledges are overstated by this amount. This reduction in gross investment translates into a $390,000 reduction in Wisconsin Bell's revenue requirements.

120. Except for the misallocations caused by the few remaining CM and CMM discrepancies that are described above, the LECs' C&WF investments appear to be categorized and apportioned in conformance with the Part 36 rules. In addition to examining these investment data and the explanations set forth in the LECs' direct cases, we also studied the numerous issues raised in the oppositions. We believe most these issues are adequately addressed by the LECs' rebuttals or by the information provided in their direct cases.

121. Ad Hoc claims that Bell Atlantic failed to explain how it calculated its projected increase in the ratio of exchange trunk investment to subscriber loop investment for Pennsylvania Bell and Diamond State Telephone Company. Ad Hoc does not support its claim with any explanation of why the projected increases in the trunk-to-loop ratios are unreasonable. We believe these increases

are reasonable in view of the recent changes in the separations rules applicable to this investment.[155] The new Part 36 rules consolidated some categories of C&WF to simplify the separations process. Therefore, the ratio of exchange trunks to subscriber loops could change to reflect the composition of the consolidated categories. Moreover, while this ratio is somewhat higher for Pennsylvania Bell and Diamond State than for other companies, we do not believe that this ratio or the projected interstate investment in exchange trunk is outside the reasonably expected range.

V. VOICE GRADE SPECIAL ACCESS DEMAND

A. *Introduction*

122. The projected demand quantities for voice grade special access lines that most LECs used to develop special access rates assumed that voice grade special access would decline in 1988. Various petitions to reject, suspend or investigate the 1988 tariffs questioned the validity of that assumption. Various petitioners also alleged that LEC cost projections did not reflect the same decline in voice grade special access demand. Those petitioners claimed that the demand projections, the cost projections, or both must be unreasonable.

123. The *Phase I Designation Order* was limited to the consistency question because the Common Carrier Bureau decision to suspend some proposed increases in special access rates was based upon the premise that rate increases should not become effective until the affected LECs demonstrated that the cost and demand projections are not grossly inconsistent. The *Phase II Designation Order* required LECs to provide additional justification and explanation for both their demand and cost forecasts and to demonstrate that the forecasts are sufficient. For purposes of this Order, we have decided to examine the demand forecasts before we examine the alleged inconsistencies between cost and demand projections.

124. The *Phase II Designation Order* directed the LECs to provide some historical trend data to assist us in evaluating the projected decreases in voice grade special access. That Order said that the direct cases "should include actual data describing changes in voice grade and high capacity demand for a period of at least two years including the most recent available data." 3 FCC Rcd at 3104 (footnote omitted). LECs were also directed to show that their 1988 projections are consistent with recent demand trends, or provide an explanation for any departure from those trends. *Id.*

B. *Summary of Pleadings*

1. Direct Cases

125. Ameritech states that each of its operating companies forecasted a decline in voice grade (VG) special access or demand in the annual filing based on migration to Hi-Cap and bypass as large users changed to Megacomtype services. Ameritech Direct Case at 14-17. Ameritech asserts that later available data have proven the forecasts were conservative in their prediction of a drop in VG demand. Based on recent actuals, Ameritech states that:

> --Illinois Bell now expects VG demand to be 3.3 percent below the October forecast based on data for the last six months of 1987.
>
> --Indiana Bell appears to have over-forecast VG channel termination demand by 12 percent.
>
> --Michigan Bell's forecasted VG demand for 1988 appears to be overstated by 16 percent, since actual demand for the last six months of 1987 "plunged."
>
> --Ohio Bell's 1988 VG demand is on target.
>
> --Wisconsin Bell overforecasted VG demand by 6 percent.

126. VG circuit demand shows similar results, according to Ameritech. Four of the five operating companies overforecasted VG circuit demand. The fifth company, Illinois Bell, is within 1 percent of its forecast. *Id.* at 15-18. Ameritech's Hi-Cap data, by state, are provided in Attachment E of the direct case. Data from each page, reflecting number of channel terminations (CTs), are summarized in the following table:[156]

	Hi-Cap CTs forecast	1st Quarter 1988 (actual)	Hi-Cap forecast	Circuits (actual)
Illinois	4476	4070	3389	3580
Indiana	1489	880	962	765
Michigan	3262	3838	2186	2708
Ohio	3015	2955	2573	2476
Wisconsin	840	785	646	605

Hi-Cap CTs are exceeding the 1988 forecast in Michigan. The other states (except Indiana) are within 10 percent of their forecasts. Hi-Cap circuits are exceeding the forecast in Illinois and Michigan. Wisconsin and Ohio are within 10 percent of their forecasts. *Id.*

127. Bell Atlantic states that VG demand, as of April 1988, was already 3 percent below mid-year 1988 forecast demand levels, and that DS-1 demand was about 3.7 percent above the October forecast. Bell Atlantic attributes these differences to its having misjudged the speed of migration from VG to Hi-Cap. Bell Atlantic Direct Case, Appendix E.

128. BellSouth states that the trend of actual results for 1988 confirms its forecast that VG demand would decline. In fact, March 1988 actual VG demand is already lower than the forecast. Hi-Cap, however, is showing the opposite trend; March 1988 actual results are generally higher than forecast, according to BellSouth. BellSouth explains the misforecast as due to the switch to Hi-Cap from VG occurring at a faster rate than BellSouth originally foresaw. BellSouth Direct Case at 24-25. *See* BellSouth Exhibits 8 and 9, which graphically display VG and Hi-Cap demand from January 1986 to February 1988. Actual demand numbers, in tabular form, are not provided.

129. Unlike most other LECs, Contel projected increased demand for both VG and Hi-Cap special access. While these projections of VG demand growth are consistent with actual results in Virginia and New York, both California and Texas have experienced declines in VG demand. Contel also forecasted increased demand for Hi-Cap in California, New York, and Virginia. [157] These forecasts were accurate with regard to California and New York, but Virginia Hi-Cap demand remains virtually stat-

ic. Like Contel, United forecasted increased demand in both VG and Hi-Cap services. United's Direct Case Attachment E shows 1986 and 1987 actual demand. United states that it has reported Hi-Cap demand in terms of equivalent VG terminations to permit ready comparison with VG demand on the same graph. United also notes that its regression analyses support the reasonableness of its demand projections. *Id.* at 15. New York Telephone states that its October 1987 forecast of special access demand was based on trends in billing demand between July 1986 and June 1987. Subsequent actual data for the period July 1987 - March 1988, New York Telephone claims, indicate a significant drop in demand below the October forecast levels. NYT Phase II Direct Case at 32.

130. SWB's corrected actual demand showing (submitted in an Erratum July 1, 1988) in Exhibit G supports its statement that actual VG demand has fallen below forecast for every month since May 1987, while actual Hi-Cap demand has exceeded forecasts for every month since June 1987. US West states that the original demand quantities and the migration from VG to Hi-Cap are consistent with the recent historical trends in special access demand. US West Direct Case at 27. The following tables constructed from Exhibits 10, 11, and 12 of the US West Direct Case show March 1988 actuals, the 1988 forecast and recent trends in special access demand in the US West region.

CHANNEL TERMINATIONS

	Filed History 7/1986-6/1987	Recent History 1/1987-12/1987	1988 Forecast Filed 10/1987	March 1988 Actual
MTN 2W VGD	63,075	58,964	55,031	55,551
MTN 4W VGD	96,496	76,354	67,241	63,971
MTN Hi Capacity	3,424	4,223	6,759	4,784
NWB 2W VGD	52,018	50,740	49,891	47,652
NWB 4W VGD	57,940	54,636	50,982	48,891
NWB Hi Capacity	1,973	2,390	3,467	3,051
PNB 2W VGD	30,878	29,830	29,839	26,099
PNB 4W VGD	36,058	32,271	30,569	27,843
PNB Hi Capacity	2,531	3,084	4,228	3,836

2. Comments; Oppositions

131. AT&T charges that the deviation in Ameritech's DS-1 actual demand from the level forecasted indicates an overrecovery of $3.3 million. This deviation occurred despite Ameritech's upward adjustment of its original forecast, which is insufficient to correct the discrepancy from Ameritech's actuals, AT&T argues. Further, AT&T states, Ameritech has made no adjustment to its filed rates to reflect the revised forecasts. AT&T Comments at 25-27.

132. AT&T challenges Bell Atlantic's demand data as insufficient on the grounds that Bell Atlantic has provided actual data for only four months. *Id.* at 23. Further, states AT&T, Bell Atlantic offers no explanation for its failure to substantiate its October 1987 forecast with monthly actual data for the required two-year period. *Id.* MCI asserts that Bell Atlantic's actual data submission demonstrates that its New Jersey Hi-Cap demand forecast was significantly understated. MCI Opposition at 19-20. MCI calculates Bell Atlantic's New Jersey underforecast at 37 percent, and its underforecast for Delaware at 50 percent. MCI states that Bell Atlantic should reduce its Hi-Cap rates in New Jersey and Delaware to reflect these actual demand levels. *Id.*

133. AT&T challenges BellSouth's forecast for Hi-Cap demand as being seriously understated, resulting in excessive CT rates. AT&T alleges that Contel has provided only three months of actual data for the period July 1985 to December 1987. AT&T states that these data are insufficient and that Contel has offered no explanation for its failure to provide additional data. AT&T Comments at 24. AT&T also argues that United has adjusted its data in a way that makes the United data less useful for comparative purposes, in that United has converted Hi-Cap demand to VG equivalents by counting each DS-1 channel as 24 VG channels. *Id.* United then combines the converted data with its demand for VG service, to provide a composite history of actual demand, according to AT&T. *Id.* AT&T asserts that it is impossible to determine from these data what changes in demand for VG and Hi-Cap have occurred over the period since 1985. Finally, AT&T challenges US West's demand showing as inadequate because US West has not provided channel mileage or circuit quantity figures. *Id.*

3. Rebuttals

134. Several LECs respond to challenges regarding the substantial declines in voice grade service demand demonstrated in their direct case demand showings. Those LECs state that their forecasts are validated by their actual data showing that VG demand is generally running even lower than the October forecasts indicated. *See, e.g.*, Bell Atlantic Rebuttal at E-1; BellSouth Rebuttal at 20.[158]

135. AT&T challenged several of the LECs with providing too little data in their direct cases. It says several LECs did not provide data for the required minimum two-year period and did not provide channel mileage data. Most responding LECs note that the *PhaseII Designation Order* did not specify the frequency of the data collection over that period: Bell Atlantic provided end-of-year quantities for 1985, 1986, and 1987, and the latest actuals available, for April 1988. Bell Atlantic Rebuttal at E-2. Contel asserts that its special access quantities represent average in-service quantities for three historical periods covering July 1985 to December 1987. Contel Rebuttal at 6.[159] *See also* Nevada Bell Rebuttal at 1-2; Pacific Bell Rebuttal at 7-9; US West Rebuttal at 15-16.

136. Other LECs note that the *Phase II Designation Order* did not stipulate the inclusion of channel mileage and circuit quantities data. *See, e.g.*, Southwestern Bell Rebuttal at 6; US West Rebuttal at 16. BellSouth argues that its data are adequate, despite AT&T's assertion that it should have provided actual demand data for channel mileage and circuits, because the data submitted allow for analysis of the issue the Commission was investigating; *i.e.*, the alleged understatement of VG demand and overstatement of Hi-Cap demand. BellSouth Rebuttal at 19-20. Centel makes a similar argument. Centel Rebuttal at 3.[160] BellSouth says that its data concentrate on the

relationship between VG and Hi-Cap demand, and that this is best demonstrated through data on demand for CTs. BellSouth Rebuttal at 20.

137. Several LECs respond to AT&T's allegations that they underforecast 1988 Hi-Cap demand. Ameritech Rebuttal at 18; BellSouth Rebuttal at 20; NYNEX Rebuttal at 23-25; Pacific Bell Rebuttal at 9-11; Southwestern Bell Rebuttal at 7-8. NYNEX contends that NYT and NET Hi-Cap demand projections, revised for submission in the direct case, were entirely reasonable, and that this is demonstrated by the actuals submitted in its direct case. NYNEX Rebuttal at 24.[161] NYNEX also alleges that AT&T's calculations are incorrect as they are based on incorrect demand numbers and contain calculation errors and plotting errors. *Id.*[162]

138. Ameritech states that AT&T's trending calculations should not be given credence because trend projections can differ significantly based on what historical demand data are considered relevant, and what weight they are given. Ameritech Rebuttal at 18. Ameritech gave more weight to more recent data (July 1987 to March 1988), it states, while AT&T's trend models use two years' data unweighted. *Id.* Further, Ameritech argues, the trend projection forms the basis for, but does not constitute, the final forecast, since other factors must play a role. *Id.* at 19.[163] BellSouth also rejects AT&T's trending methodology, stating that AT&T ignored the VG and DS-3 actual demand data and the conversion of DS-1 to DS-3 services. BellSouth Rebuttal at 20-21.[164]

139. Bell Atlantic responds to MCI's allegations that it underestimated demand for Hi-Cap in New Jersey and Delaware by noting that Bell Atlantic offers access services under a single regionwide rate to reduce the dependence of rates on individual jurisdiction forecasts. Bell Atlantic Rebuttal at E-1. Thus, Bell Atlantic asserts, variations in one or two jurisdictions are offset by opposite variations elsewhere, as is the case here. While demand is higher than forecast in New Jersey, Delaware, and West Virginia, Bell Atlantic states, it is lower in Pennsylvania, Virginia, Maryland, and the District of Columbia. *Id.* (citing Bell Atlantic Direct Case at Exhibit E-2).

C. *Discussion*

140. The actual data for the early months of 1988 clearly demonstrate that VG demand is declining at least as rapidly as most of the LECs anticipated in their 1988 demand forecasts. In these circumstances there is no reason to examine the historical trend data requested in the *Phase II Designation Order*. We are satisfied that no adjustments are required to reflect an underestimate of voice grade special access demand in the demand quantities that the LECs used to compute the 1988 special access rates.

141. The actual data do indicate that several LECs apparently did underestimate demand for Hi-Cap services. That question was not, however, designated for investigation in this proceeding so it would not be appropriate for us to adopt adjustments to reflect Hi-Cap demand estimates in this Order. Our Order in this proceeding does not, of course, preclude Section 208 remedies for persons who may have been adversely affected by erroneous Hi-Cap demand estimates. We note, however, that many such persons have been alleging that the October 1987 LEC forecasts exaggerated the likely shift from voice grade to Hi-Cap services. It would be difficult, then, for such persons to demonstrate that the LECs should have anticipated more growth in Hi-Cap services when the 1988 access tariffs were filed.

VI. CONSISTENCY OF COST AND DEMAND PROJECTIONS

A. *Introduction*

142. Changes in demand for VG special access affect both total investment in C&WF and circuit equipment that is used to provide voice grade special access, and the computation factors that are used to apportion such investment between the state and interstate jurisdictions. A decline in demand does not necessarily have an equal effect upon total investment in the short term because any unused facilities are likely to be temporarily stranded. A decline in demand could, however, have a significant effect upon ratios of plant in service that are used to compute the jurisdictional separations factors.

143. Phase I of this proceeding was designed to examine allegations that the LECs had failed to reflect projected changes in plant in service – *i.e.*, the projected decline in interstate voice grade special access lines – in the projected cost computations. The Common Carrier Bureau was unable to resolve that question on the basis of the Phase I pleadings, and accordingly invited further comment and directed the LECs to provide more information in the *Phase II Designation Order*. That Order mandated that each affected LEC submit a direct case showing its C&WF costs.[165] We required each of these LECs to submit baseline and projected unseparated investment and separations factors for each C&WF category or subcategory. We also required that these LECs provide loop counts and other basic data used to derive baseline and projected separations factors and an explanation of the methods used to develop projected loop counts and other units used to derive separations factors.

B. *Summary of Pleadings*

Cost Projection Development

1. Direct Cases

144. Ameritech states that it considered the use of historical separations factors, not adjusted to reflect prospective demand shifts, to be reasonable and non-prejudicial. Ameritech Phase II Direct Case at 11. In Phase I, Ameritech adjusted special access revenue requirements to reflect shifts in prospective demand. Ameritech adjusted C&WF cost by reducing it by the percentage decline in analog demand from the PYCOS to the prospective period. Ameritech's Phase II direct case defends its surrogate methodology. *Id.* at 14. Ameritech discusses its use of this methodology for COE Category 4.23 data as well. *Id.* at 6. Ameritech asserts that its use of historical COE Category 4.23 demand data in the separations process, and forecasted demand data in the rate-setting process, did not result in an overstatement of interstate rates for four of its five companies. *Id.*[166] For the fifth, Illinois, Ameritech states that its March 1, 1988, rate reduction corrected the slight overstatement. *Id.* Ameritech discusses and justifies its use of a surrogate method, which, it states, achieves a direct relationship between special access demand and cost. *Id.* at 8-9. Further, Ameritech notes, in its Phase I

rebuttal it adjusted its Hi-Cap weighting factor to reflect actual cost differences between Hi-Cap and VG unit investment; the factors now range from 16 to 24 among the five companies. *Id.* at 9-10. Ameritech also adjusted high capacity unit investment to reflect the associated multiplexing. The result of these adjustments was to raise the special access revenue requirements of four of the Ameritech companies. *Id.* at 10.

145. Bell Atlantic states that its methods assure that forecast quantities for separations purposes are consistent with forecasted trends for related special access demand units. Bell Atlantic Direct Case at D-2. It uses a historical period to establish a relationship of separations quantities to demand quantities, then applies this relationship to the respective demand quantity forecast. *Id.*

146. BellSouth explains that it developed separations factors based on March 1987 data and forecasted consistent with expected growth in the related special access demand quantities. BellSouth Direct Case at 16-17. Forecasted loop quantities were also based on the related special access demand quantitites, channel terminations, BellSouth asserts. *Id.* at 17.[167] The lack of congruence shown in the data for Kentucky, Louisiana, and South Carolina is due to the relative change in demand for collocated and noncollocated channel terminations, BellSouth states. *Id.* at 20. BellSouth explains that a decrease in demand will not necessarily produce a reduction in loops. *Id.* at 21. Cincinnati explains that it categorized its test period construction budget based on historical factors adjusted for basic studies to take effect in January 1988. Cincinnati Direct Case at 2-7, referring to Fig. 2-10. Cincinnati states that its historical and prospective C&WF categorization factors bear a reasonable relationship. *Id.* at 2-7 to 2-8.

147. NET used recent historical factors rather than projected separations factors in its Phase I direct case C&WF showing. NET Phase II Direct Case at 16. NET performed a study of prospective separations factors and developed prospective separations loops and miles for state and interstate private line and message. *Id.* NET describes in detail the methods it used to develop prospective loops and miles, including development of growth rates for each loop category. *Id.* at 17. NET explains that the migration of VG to Hi-Cap services means that CTs decline with no concomitant decline in loops because loop facilities are not involved at the collocated end. Thus CTs decline more rapidly than loops, NET asserts. *Id.* at 18, n. 14. NET also states that it developed its prospective loop count on the same basis as was in effect prior to January 1988, including both Wideband and nonwideband services in the development of prospective special access loops. *Id.* at 19.

148. NET says that it used the same basic procedure to develop projected separations mileage data for message and private line as it used to develop prospective loop counts. *Id.* at 20-23. NET developed prospective loops and miles for message, private line-intrastate and private line-interstate, then applied the appropriate C&WF weighting factors to interstate private line loops. *Id.* at 23-24. NET asserts that its current methodology develops projected separations factors, and insures a consistent relationship between demand for special access service and the costs associated with that level of demand. *Id.* at 24.[168]

149. New York Telephone analyzes loop count data to develop a relationship of loops to CTs for each category of special access service. NYT Direct Case at 19. NYT states that its conversion from TIRKS to CABS in September 1987 caused an unexpected decline in loops. *Id.* at 20. NYT explains that separations-related mileage can increase while demand-related mileage decreases because mileage is employed differently in the separations process. *Id.*[169] Regarding Hi-Cap channels, NYT makes a showing virtually identical to NET's. *Id.* at 23-25.

150. Pacific Bell states also that its separations and ratemaking data are consistent. Pacific Bell Direct Case at 11-12. Pacific Bell explains that it ensured that historical demand and historical separations factors were consistent, then compared these demand units to the loops counted for separations purposes. Pacific Bell states that its ratio of 1.92 indicates a high standard of consistency. *Id.* at 13.

151. SNET states that its total COE Category 4.23 costs are consistent with projected demand used to compute special access rates. SNET Direct Case at 8. SNET refers to its Phase I direct case in asserting that it has provided a detailed explanation and quantification of adjustments made to separations allocation factors to reflect prospective changes in demand, and summarizes the demand adjustments shown in its Phase I direct case. *Id.* at 8-9.[170] SNET notes that its October 1987 filing included documentation of the Part 36 separation of COE Category 4.23 investment, and that its separations allocation factors for loops, miles, and circuit terminations were based on corporate administrative forecasts and network configurations consistent with special access demand forecasts used for ratemaking purposes. *Id.* at 9. SNET states that its projected demand for special access used for ratemaking is consistent with its projected demand for special access used for separations processes in that estimated demand figures for both purposes are derived from the same corporate forecasts of demand. *Id.* at 10.

152. United contends that its C&WF methodologies are based on the Commission's rules and produce special access rates that reflect consistency between the factors used to establish costs and the factors used to project demand. United Direct Case at 9-10. United describes its development of loop counts and circuit miles, and its calculation of projections. *Id.* at 10-12. United states that it adheres to the guidelines of Section 36.155 of the Commission's rules in apportioning multiplexed Hi-Cap channel costs that are not directly assignable by using relative minutes of use. *Id.* at 12-13.

2. Opposition

153. Ad Hoc characterizes Bell Atlantic as unresponsive in its attempt to demonstrate consistency between ratemaking and separations demand. Ad Hoc Opposition at 50. Ad Hoc challenges Ameritech as showing dramatic and inexplicable growth in loop counts, while VG channel terminations and circuits have decreased. Ad Hoc Opposition at 47. Ad Hoc states that Ameritech offers no explanation for this phenomenon, nor of its methodology for projecting total C&WF investment and C&WF separations factors. *Id.* at 48. Ad Hoc charges that Ameritech has failed to satisfy the Commission's requirement of demonstrating consistency between ratemaking and separations demand figures, and that Ameritech's "surrogate methodology" is fundamentally flawed. *Id.* at 49.

3. Rebuttal

154. Ameritech, in the only rebuttal comments addressing this issue, states that it did not project C&WF separations factors, but used historical data. Ameritech also defends its surrogate methodology as adjusting investments rather than separations factors. Ameritech Rebuttal at 16-17.

Reconcilability of Cost and Demand Showings

1. Direct Case and Rebuttal Filings in Phase I

155. In their attempts to resolve the discrepancy between rising costs and declining demand, the Phase I direct cases and rebuttals generally reflect the fact that ratemaking demand and separations demand are dissimilar (through use of different units of measure).[171] Some LECs state that this makes the two showings difficult or impossible to reconcile. Southwestern Bell, for example, states that it is not possible to perform a reconciliation of prospective ratemaking and separations allocation factors for any of the involved categories. In explanation, SWB states that differences in level of detail in preparation of the two forecasts would cause variations to exist, making reconciliation difficult and exacerbating the difficulties caused by the fact that separations allocation factors and ratemaking demand are stated in different units of measurement. SWB Phase I Direct Case at 6-8.

156. Further, says SWB, the reconciliation of prospective separation allocation factors and ratemaking demand for all categories is not possible,[172] so that no complete reconciliation between tariffed units of demand and separations units can be achieved. *Id.* at 7-8. Pacific Northwest Bell agrees that since channel air mileage does not correlate with separations interexchange circuit miles, the demand showings cannot be reconciled. Pacific Northwest Bell (PNB) Phase I Direct Case at 8.[173] PNB adds that CT counts cannot be compared to any costing measure, so that no true reconciliation is possible.

157. Other LECs argue that, while absolute reconciliation of the two forecasts is not possible because of the use of different units of measure, careful analysis can develop a clear, reconciliatory relationship between the two.[174] NYNEX states, for example, that NYT's analysis shows that projected separations-based loops for the test year are within 1 percent of demand-derived loops for the projected test year, and that projected route miles for separations are within 3 percent of estimated projected route miles derived from an analysis of projected demand-related airline miles. Thus, while there can be no direct correlation between separations-based loops and miles on the one hand and demand-based channel terminations and channel mileage on the other, either in the PYCOS or in the projected test year, NYT states that its analysis confirms that its two forecasts are not inconsistent. NYNEX Phase I Direct Case at 3.

158. Cincinnati states that, while there is no direct relationship between loops and CTs, and a change in demand in loops does not equate to the change in demand in channel terminations (because the number of loops associated with channel terminations is dependent on the specific type of service), still, by studying the evolving ratio of loops to CTs (a ratio that is increasing, due in part to the requirement for 4-wire CTs for more sophisticated services), trends in each set of data can be analyzed and found to be reasonable. Thus, argues Cincinnati, one can find that the separations factors employed in developing special access revenue requirements are consistent with and reflect forecasted special access test year demand quantities. Cincinnati Phase I Direct Case at 14-17.

159. Bell Atlantic states that it calculated the historical relationship between separations demand and ratemaking demand for each of the investment categories and for each of its jurisdictions, then applied that ratio to 1988 ratemaking demand forecasts, to derive a 1988 forecast separations allocation factor. That factor was then applied to 1988 costs to yield a new special access revenue requirement. Bell Atlantic Phase I Rebuttal at 1-2.[175] GTOC asserts that its procedures, which convert the demand forecast physical loops to 2-wire equivalent loops used to determine cost apportionment factors, assure consistency between the demand forecast units used for rate development and those used for cost apportionment factors. GTOC Phase I Rebuttal at 3. GTOC further contends that its data show and justify the relationship between the change in demand units and the change in apportionment factors,[176] and that units of measure used in cost separations studies are consistent with trends used in ratemaking.[177] *Id.* at 10-12.

160. Still other LECs make showings purporting to demonstrate that their projections for ratemaking demand and for separations demand are consistent. Pacific Bell, for example, states that it converts demand units expressed as CTs to equivalent 2-wire CTs, rendering the ratemaking CT count comparable to the loop count performed for separations purposes. Pacific Bell states that the ratio of equivalent 2-wire CTs to Separations Information System (SIS) loops is 1.92, and that the relationship between equivalent 2-wire CTs and SIS loops should be about 2.00, indicating that Pacific Bell's historical demand and separations factors are consistent. Pacific Bell Phase II Direct Case at 13. Similarly, Pacific Bell states that the ratio of route miles to special access airline mileage is 1.60, a ratio that Pacific Bell says falls within the "range of reasonableness" for reconciliation purposes. Pacific Bell Phase I Direct Case at 2-4.

2. Direct Case Filings in Phase II

161. Bell Atlantic asserts that there is no close parallel in special access demand quantities to separations interexchange terminations, and therefore no reliable basis for comparison of the two demand showings. Bell Atlantic Phase II Direct Case at C-4-5. GTOC also contends that interexchange termination counts do not correlate to projected demand quantities. GTOC Direct Case at 11. It states that projected termination counts are consistent with projected demand quantities to the extent that both projections use the same forecasting criteria, *i.e.*, market growth, service offering, and technological changes. There is no correlation between projected demand quantities and projected terminations, however, simply because no "termination demand unit" exists, GTOC asserts. *Id.* at 12. US West states that the number of terminations used in calculating ratemaking demand is a function of the number of offices through which a circuit passes, is directly related to the type of service and the facilities available, and will therefore vary from case to case for the same service. US West states that there is no evidence to suggest that a relationship between such demand units and the quantity of terminations used in

COE Category 4.23 separations calculations exists, nor that one could be developed. US West Phase II Direct Case at 15-16.

162. US West states that it cannot fully reconcile channel mile data with circuit mile data, because the former measure airline distance between the wire centers serving the customer-designated premises carrier, while the latter measure route miles between wire centers in different exchanges. Further, the former include both exchange and interexchange air miles, while the latter include only interexchange route miles. US West Phase II Direct Case at 22-23. US West states that it is analyzing these two data sources to determine whether some relationship can be derived, but that no such correlation has yet been developed.

163. BellSouth notes that counts for past periods were not necessary, so there was no historical base from which to determine a trend or to forecast into 1988; BellSouth accordingly used the counts for April and May 1987 as the forecast of test period terminations. *Id.*[178] BellSouth asserts that a decrease in VG special access demand does not necessarily mean that the special access revenue requirement should also decrease, and that the migration from VG to Hi-Cap special access demand will produce a shift from COE Category 4.23 to COE Category 4.22 investment. *Id.* at 14. Thus, conversions from VG to Hi-Cap would not result in termination count adjustments that would significantly impact the special access revenue requirement, BellSouth argues. *Id.* at 15.

164. GTOC asserts that growth in COE Category 4.23 costs does not necessarily correlate with projected changes in demand quantities. GTOC Direct Case at 9-10. GTOC cites the absence of any single demand unit directly related to COE Category 4.23, and the fact that this category provides equipment for both special access and switched access usage. *Id.* at 11. GTOC provides Attachment B.4 to show the change in switched minutes of use demand from 1986 to 1988, and Attachment B.2 to show the change in COE Category 4.23 investment for the same period. GTOC states that, although the changes generally move together, no direct comparison can be made. *Id.*

165. United agrees that this matter is problematic, and states that the Part 36 rules change (from circuit miles to terminations) precludes a meaningful comparison of the data. United Phase II Direct Case at 7-8.[179] United states that its projected growth in demand consistently matches or outpaces projected changes in costs. *Id.* Ameritech again uses, and seeks to justify the use of, its surrogate method. Ameritech Phase II Direct Case at 6-9. Ameritech insists that its special access rates do not reflect an inconsistency that could harm ratepayers. *Id.* at 11.

166. US West states that loop counts used to assign COE transmission and C&WF investment are, as it stated in its Phase I direct case, consistent with the CT ratemaking demand. US West details the procedures used to assure this consistency. US West Phase II Direct Case at 21-22.[180] Cincinnati, too, details its methodology, stating that it uses projected demand to develop the prospective special access interexchange mileage (route miles). Cincinnati Direct Case at 2-4. Cincinnati states that the ratio of special access to total terminations is consistent with the ratio of special access to total interexchange mileage used historically. *Id.* Cincinnati explains that it developed total unseparated regulated COE Category 4.23 investment and separations factors by developing a Part 32 unseparated regulated Construction Budget for the test period, then combined Accounts 2211, 2212, and 2215 to form separations Account 2230. *Id.* at 2-4 to 2-5. Cincinnati shows its March 1987 baseline investment and the hypothetical Part 32/36 Categories 1 through 4. *Id.* at Fig. 2-5. It shows the former Category 8 historical subcategorization factors compared to the COE Category 4 prospective subcategorization factors. *Id.* at Fig. 2-6. United, too, asserts that its data filings are consistent, as both are based on the projections and actuals provided by network engineering, planning, and forecasting personnel. United Phase II Direct Case at 11.

3. Oppositions and Comments in Phase II

167. Ad Hoc, AT&T, MCI, Microtel, and TV Users filed oppositions or comments to the Phase II direct cases. Ad Hoc charges that the same parties that filed Phase I direct cases with serious discrepancies have filed Phase II direct cases that are disorganized, incomplete, inaccurate, and abstruse. Ad Hoc Phase II Opposition at 4. Ad Hoc argues that several carriers should be required to refile, and that the new direct cases should contain basic elements such as sample computations in revenue requirement development, citations to rules sections used to develop assignments or allocations, and definitions of terms. *Id.* at B-8.[181]

168. MCI states very briefly that the LECs have again failed to reconcile demand used for ratemaking with demand used for separations. MCI Opposition at 20. MCI challenges US West as being "typical" in its conflicting statements that: (1) there is no empirical evidence to indicate that a relationship exists between separations units and demand units, or that one could be developed; and (2) its 1988 access charges currently in effect are completely reasonable. MCI avers that if the LEC can find no relationship between ratemaking demand and separations demand, it cannot assert that its rates are reasonable. *Id.* at 21. Ad Hoc also contends that none of the BOCs exhibiting cost-demand discrepancies has reconciled separations factors and ratemaking demand showings. *Id.* at 44. Ad Hoc charges that Bell Atlantic and US West simply state that no relationship, and no basis for comparison, exists between these two data sources. *Id.* Further, says Ad Hoc, NYT and NET maintain that there is no direct relationship, and Ameritech asserts only that its special access rates do not reflect any inconsistency that harms ratepayers. Ad Hoc Opposition at 45.[182] MCI argues that the LECs cannot know that their charges are reasonable if the carriers assert that they are unable to reconcile ratemaking demand and separations demand. MCI Phase II Opposition at 21.[183] Thus, MCI states, the ratemaking process is potentially far removed from the actual costs to provide service. *Id.* No price increases should be allowed until full reconciliation takes place, MCI asserts. *Id.*

4. Rebuttals in Phase II

169. GTOC responds to MCI's and Ad Hoc's challenges by stating that it has shown that its projected termination counts are consistent with the projected demand quantities, to the extent that both projections use the same forecasting criteria, *i.e.*, market growth, service offering, and technological changes. GTOC Phase II Rebuttal at 15. GTOC argues, however, that there is no direct correlation between any projected demand quantities and projected terminations, since there is no "termination demand unit." *Id.* at 15-16. GTOC elaborates by citing to the

direct cases of United (at 7-8), Bell Atlantic (at C-4 to C-6), and US West (at 15-16). GTOC states that the LECs have adequately demonstrated the impossibility of significant reconciliation. *Id.* at 17.

170. Southwestern Bell argues that no direct comparison is possible because of the differences in the level of detail utilized in the preparation of separations and ratemaking forecasts and in the manner of measuring separations allocation factors and ratemaking demand. Southwestern Bell also states that it has been reconciling interstate revenue requirement and ratemaking demand on an ongoing basis since 1985. *Id.* at 13. It asserts that it does not have a significant problem matching interstate special access revenue requirement and ratemaking demand. *Id.*

171. In response to Ad Hoc's challenge that it shows Category 4.23 cost increases, both absolutely and proportionally, despite decreases in demand, NYNEX explains that the Part 36 separations factor, circuit terminations, shifted significant investment to COE Category 4.23 private line interstate. NYNEX Rebuttal at 10-11 (citing Ad Hoc Opposition at 20-23). Because Category 4.23 is interexchange circuit equipment, NYNEX avers, it does not reflect the full effect of the decline in special access demand, while the assignment of total COE Category 4 investment to private line interstate does reflect that decline. *Id.* NYNEX also discusses the effect of the new Part 36 separations as applied hypothetically to the old Category 8.23 investment, in support of its contention that the new separations factor is the primary cause of the increased Category 4.23 costs. *Id.* at 12-13. US West also insists that the new Part 36 rules have contributed substantially to the increased Category 4.23 investment showings. US West Rebuttal at 14. Further, US West notes that Ad Hoc's Table I, purporting to show budget growth in Category 4.23, combines the effects of the separations rules changes with budget growth. *Id.* at 15.

C. *Discussion*

172. We are generally dissatisfied with the LECs' attempts to show that their projected 1988 circuit equipment and C&WF investment is consistent with their projected 1988 special access demand. Various LECs argue that no reconciliation is possible, that they have achieved a level of reconciliation at which their figures are "not inconsistent," or that any inconsistency has not affected rate development in a manner that could harm ratepayers. They argue that no comparisons can be made, and no proportionality achieved, because ratemaking demand projections are based on different units of measure than are used for separations demand projections. No relationship exists, these LECs allege, between channel mile data and circuit mile data, or between loops and circuit terminations. At most, the LECs argue, we should look for some rough consistency in the trends in the two areas.

173. We are aware, of course, that different units of measure are involved in the two projections, but we do not accept the LECs' argument that it is impossible to reconcile investment and demand projections. The *Phase II Designation Order* specifically required the LECs to consider and analyze the consistency between ratemaking demand and separations demand, to discuss the correlation of allocation factors and demand showings, the relationship between loops and CTs, and the interrelationship among the allocation factors themselves. The LECs state that this is impossible, but in fact, the Bureau has analyzed the data available in the record and has determined that, for both C&WF and COE-transmission,[184] the investment and demand factors for many carriers are inconsistent.[185]

174. Further, the Bureau compared 1988 investment figures reported by the carriers in their ARMIS filings with their TRP forecasts and the Bureau's forecasts, and found that in most cases, the 1988 actual figures support the Bureau's estimates.[186] We are requiring reductions in a LEC's investment for the interstate special access element to the extent that its TRP estimate exceeds its actual investment reported in ARMIS filings by a material amount.[187]

175. While we do not mandate a particular approach to be used by the LECs in their attempts to achieve consistency in the annual access tariff filings, it is clear that their efforts so far have met with limited success. Future access filings should specify the methodologies used to create projected separations factors, and should describe in detail the procedures that each LEC has adopted to achieve consistency in cost and demand projections.

VII. TAX ISSUES

A. *Introduction*

176. The Tax Reform Act of 1986 (TRA) reduced tax rates in two steps.[188] Tax rates were reduced from 46 percent to 40 percent in 1987 and from 40 percent to 34 percent in 1988. These tax rate changes created an excess in accumulated deferred income tax credits. In general terms, this excess is the difference between taxes which have been deferred in earlier years at older higher rates but will be payable over time to the Internal Revenue Service (IRS) at the new lower rate. Since this excess will not be payable to the IRS and has been recognized as tax expense in previous years for ratemaking purposes, the excess has the effect of increasing net income of current and future years. Section 203(e) of the TRA precludes regulators from flowing the excess through income determinations in any manner other than that stipulated in the TRA.[189]

177. The *December 24 Order* noted some inconsistencies in carrier cost support data which indicated that some carriers had reflected the flow back of these excess deferred taxes in an inappropriate manner, or had ignored the flow back process entirely. The *Phase II Designation Order* required that all Tier 1 carriers include in their direct cases a showing that their revenue requirement computations comply with the terms of Section 203(e) of the TRA. That Order also noted that BellSouth (Kentucky) had proposed a substantial federal income tax expense increase despite the changes in tax rates, and included an examination of this increase in this investigation.

B. *Summary of Pleadings*

1. Direct Cases

178. In the direct case filings, the Tier 1 carriers used a variety of means to make their showings of compliance with the TRA. Some merely stated that they had reflected the flow back of excess deferred taxes appropriately.[190] Some gave hypothetical examples to illustrate the method-

ology they employed.[191] Some showed the actual process employed only on a total company basis.[192] Several carriers admitted they had failed to reflect reductions for excess deferred taxes, but asserted that the impact on interstate revenue requirements was *de minimis*.[193]

179. It became apparent from our initial review and the comments filed that information provided in the direct cases had to be organized into more uniform presentations. As a result, the Bureau released the August 8 Public Notice requesting clarification of the data submitted in the direct cases.[194] The analysis of the direct cases, the comments and oppositions, and rebuttals, together with additional data provided by the carriers in response to the August 8 Public Notice, has led us to conclude that adjustments in the interstate access revenue requirements are required for several carriers. These adjustments, which produce a total adjustment of $37.8 million, are shown in Attachment F.[195]

2. Comments and Oppositions; Rebuttals

180. MCI and AT&T responded to direct cases on allowable federal income tax expenses. MCI alleges that BellSouth, GTOC, Nevada Bell, Centel, Contel, and Lincoln have either failed to demonstrate compliance with the *December 24 Order* or improperly calculated the impact of excess deferred taxes in their direct case filings. MCI Opposition at 10. AT&T comments that five LECs have acknowledged in direct case filings that they have failed to flow back $42.4 million in excess deferred taxes. AT&T Comments at 4. AT&T asserts that Bell Atlantic should be required to reduce its revenue requirements by $26 million, GTOC by $9.3 million, Ameritech by $6.5 million, Centel by $.4 million, and Contel by $.2 million. *Id.* at 6.

181. MCI notes that BellSouth, in its direct case, simply concludes that it complied with the *December 24 Order*, and supplies a hypothetical example of how the method it used results in an appropriate revenue requirement impact. MCI Opposition at 11. MCI alleges that according to its own calculations BellSouth should reduce revenue requirements by $27.2 million. *Id.* In rebuttal, BellSouth responds that its revenue requirements were reduced by $43.5 million, much more than the amount suggested by MCI. BellSouth Rebuttal at 3. BellSouth also provides, on a total company basis, an illustration of the calculation of the federal income tax (FIT) adjustment, which was reported on line 400 of the 1988 Tariff Review Plan Form COS-1 (P) 32, page 1.1 of 2, Column A. The interstate amount included in the income tax adjustment (line 400) related to the flow back of excess deferred taxes was $84.5 million. *Id.* at 5. BellSouth says that the adjustment amounts are separated in the same manner as deferred taxes and are included with other income tax adjustments reported on line 400. This adjustment on line 400 had the effect of reducing the allowable income taxes reported on line 500 by $43.5 million. *Id.*

182. MCI also notes that GTOC's direct case acknowledges that many GTOC jurisdictions failed to flow back excess deferred taxes, and that GTOC dismisses this failure on the grounds that the impact on revenue requirements would be *de minimis*. MCI Opposition at 12. AT&T also notes GTOC's failure to flow back excess deferred taxes, and suggests that GTOC should be required to reduce revenue requirements by $9.3 million. AT&T Comments at 5. MCI, however, alleges that this amount should be higher because the methodology GTOC employs to calculate the impact on revenue requirements is incorrect. MCI alleges that GTOC failed to adjust[196] the amount of the excess deferred taxes to determine the revenue requirement impact, and MCI submits a hypothetical example of its own to illustrate the necessary adjustment. MCI Opposition at 12 and Exhibit 2. GTOC responds that its methodology was correct. GTOC Rebuttal at 6. GTOC's rebuttal uses the MCI hypothetical example to demonstrate that MCI's illustration would not achieve appropriate results because MCI fails properly to adjust the base on which allowable income tax is calculated.[197]

183. GTOC provides a schedule showing the impact on total access revenues of its failure to flow back excess deferred taxes, in an attempt to support its contention that this impact is *de minimis*. According to the GTOC schedule, the revenue requirement impact, when spread across those companies which omitted the flow through, ranges from 1.15 percent to 0.31 percent of total access revenues. GTOC Rebuttal Attachment C.

184. AT&T comments that Ameritech and Bell Atlantic also acknowledge a failure to comply with excess deferred income tax flow back requirements, and AT&T suggests that revenue requirements should be reduced by $6.5 million for Ameritech and by $26 million for Bell Atlantic. AT&T Comments at 6. In its rebuttal, Bell Atlantic does not address AT&T's suggestion, but states that AT&T has misunderstood Bell Atlantic's direct case. Bell Atlantic Rebuttal Appendix F. Bell Atlantic observes that the AT&T comments cite Bell Atlantic's direct case Exhibit F-1 as the sole support for the claim that a Bell Atlantic rate adjustment should be required. Bell Atlantic indicates that its rates already reflect an appropriate adjustment for excess deferred taxes, citing Bell Atlantic Transmittal No. 225, which implemented the reduction effective January 1, 1988. *Id.*

185. MCI notes that Nevada Bell, like BellSouth, simply states that it complied with the TRA. MCI Opposition at 15-16. MCI also asserts that Centel, Contel, and Lincoln admit that they failed to flow back excess deferred taxes, but indicate in their respective direct cases that revenue requirement impacts would be insignificant. MCI states that in each case, flow back amounts would allow price reductions of 1 percent or more, which should be returned to ratepayers.[198] AT&T suggests revenue requirements should be reduced by $0.4 million for Centel and $0.2 million for Contel. AT&T Comments at 6. In its rebuttal, Nevada Bell places its excess deferred tax flow back figure at $593,000, with a revenue requirement impact of $854,400. Nevada Bell Rebuttal at 3.

186. Contel's rebuttal notes that for switched and special access services its average rate adjustment factor for its Tier 1 companies is 0.36 percent, which clearly indicates a negligible downward impact on rate levels. Contel Rebuttal at 5. In its rebuttal, Centel repeats its direct case contention that flow back amounts represent less than 1 percent of revenue requirements for Centel-Florida and Centel-Nevada because of certain other tax-related errors in the TRP filing for those companies. Centel believes an unwarranted reduction in its revenue requirements would unfairly penalize its shareholders and artificially reduce its rates. Centel Rebuttal at 6.

C. *Discussion*

187. The Ameritech October 1987 tariff filing failed to reflect approximately $11.8 million[199] in excess deferred income taxes, with a resulting revenue requirement im-

pact of $17.8 million.[200] In the original filing, only Ohio Bell correctly reflected its flow back. Ameritech Response to August 8 Public Notice, Attachments. On December 8, 1987, Ameritech filed Application No. 53 wherein it reported that a correction of these errors would not result in a decrease in revenue requirements of more than 1 percent for any access category for any of the affected companies. Because of this minimal impact, Ameritech did not propose any rate changes.[201] On August 5, 1988, Ameritech filed Transmittal No. 206, making a midcourse correction which reflected, *inter alia*, Illinois Bell's flow back of excess deferred taxes. Thus, Michigan Bell, Indiana Bell, and Wisconsin Bell have rates in effect which do not reflect flow back of excess deferred taxes. The amounts which should have been reflected and their appropriate effects on revenue requirements are shown below:[202]

	Excess Deferred Tax	Revenue Requirement
	(in millions)	
Michigan Bell	$3.6	$5.5
Indiana Bell	1.5	2.3
Wisconsin Bell	1.2	1.9
		$9.7

188. The revenue requirement impact is greater than the misstated tax amount because the pretax net income is based on the targeted return and the allowable tax expense.[203] When the allowable tax expense is reduced and the return and tax rate are held constant, revenue requirement impact is $1.51 for each $1.00 of allowable tax expense.[204] Thus for each dollar of tax expense that is eliminated, revenue requirements should be reduced by $1.51.[205] These reductions should be reflected in the TRPs.[206]

189. We find that a $26 million revenue requirement reduction for Bell Atlantic companies, which AT&T suggests, is unnecessary. As Bell Atlantic notes in its rebuttal of AT&T's comments, AT&T has apparently misunderstood Bell Atlantic's direct case. Our investigation revealed that errors in Bell Atlantic's TRP prospective filing were subsequently corrected and reflected in rates pursuant to Transmittal No. 225. The rates became effective on January 1, 1988.

190. MCI's allegations of a BellSouth failure to flow back excess deferred taxes seem unfounded. The evidence indicates that BellSouth's filings reflect an interstate excess deferred tax flow back of $28.7 million, with a revenue requirement impact of $43.5 million. In its rebuttal, BellSouth shows total company excess deferred taxes of $104.3 million properly adjusted to its FIT adjustment amount of $306.7 million, and other offsetting FIT adjustments of $242.2 million. BellSouth Rebuttal Exhibit C. The net of these adjustments was $64.5 million ($306.7 - $242.2 = $64.5). The $64.5 million figure agrees with the amount reported on line 400 of BellSouth's Form COS-1 (P) 32, page 1.1 of 2.[207] Other tests we performed with respect to the application of the TRP instructions also disclosed no irregularities.[208]

191. The *Phase II Designation Order* concluded that an examination of the BellSouth-Kentucky increase in FIT expense for its equal access element was warranted. The BellSouth direct case states that the increase in federal income tax for the 1988 prospective period for the equal access element is due to the fact that in 1987 the earnings for this element for the historical period in Kentucky were low (8.4 percent), and that the projected earnings for 1988 are targeted to earn a 12 percent return. BellSouth Direct Case, Exhibit 11. BellSouth demonstrated that the increase in taxable income for the projected period more than offsets the effect of the tax rate decrease caused by the TRA. Thus, we conclude that BellSouth's explanation of Kentucky's increased tax expense is sufficient.[209]

192. In its letter response to the August 8 Public Notice, NYNEX disclosed that New England Telephone TRP filings had inadvertently excluded an adjustment. Further, NYNEX disclosed that a proper revision would result in a net reduction of $2.7 million in the Special Access and Traffic Sensitive Categories and $1.8 million in the Common Line Category. NYNEX also expressed its belief that given the relatively small amounts involved, the relatively short time left in the 1988 test period, and the fact that New England's first quarter earnings were below its authorized rate of return, no rate reduction was warranted. *Id.*

193. Because other actions we are taking in this proceeding will affect New England Telephone rates, no precise resolution of the tax issues can be made at this time. We require New England Telephone to calculate its tax adjustments to reflect the other recalculations ordered here, and to report the additional revenue requirement disallowance and the apportionment of that disallowance when it files revised tariffs pursuant to paragraph 278.

194. In its direct case, Nevada Bell asserts that it is in compliance with the flow back provisions of Section 203(e) of the TRA with respect to excess deferred taxes. Nevada Bell Direct Case at 14. The MCI opposition contends that Nevada's assertion is unsupported by data. MCI argues that Nevada Bell should be required to provide data in its rebuttal to demonstrate whether the flow back has been accomplished. MCI Opposition at 16. Nevada Bell, in its rebuttal, provides supporting data that it flowed through $593,903 of excess deferred taxes to the interstate jurisdiction. The revenue requirement impact was $854,400. Nevada Rebuttal at 3. Nevada further claims that its flow back was too high, and it provides data to show that the $593,903 flow back amount should only result in a $593,903 tax reduction. *Id.* and Attachment II.

195. We believe that Nevada Bell has adequately demonstrated that it flowed through excess deferred taxes pursuant to Section 203(e) of the TRA. We do not, however, agree with Nevada's claim that it flowed back too much deferred tax in its original TRP filing. We determine that $593,903 of excess flow back should result in a $854,400 tax reduction on line 500 of the TRP, and we thus conclude that Nevada's original TRP filing was correct.

196. In its response to our August 8 Public Notice, Cincinnati Bell supplied data showing that it flowed through $207,727 of excess deferred taxes to the interstate entity. Upon closer examination of this figure, we determined that it was low because Cincinnati Bell employed an interstate factor of 5.6 percent. On August 24, 1988, Cincinnati Bell recomputed its interstate amount of excess deferred tax flow back using a corrected interstate factor of 22.75 percent. The use of the corrected interstate factor results in Cincinnati Bell's flowing through $831,468 of excess deferred taxes, which, adjusted to a revenue requirement reduction, totals $1,259,799.[210] Cincinnati also provided a current view of its excess deferred tax situ-

ation.[211] This current view shows a Cincinnati Bell's flow through of $1,597,554 of excess deferred taxes with a resultant revenue requirement reduction of $2,420,534. We adopt a disallowance to reflect the current view in Cincinnati's tariffs that reduces revenue requirements by $2,313,523.[212]

197. In its direct case filing, GT0C estimates that its failure to flow back excess deferred taxes for five companies in 24 jurisdictions would have a combined impact of $9.4 million.[213] Our analysis of GTOC's methodology for calculating revenue impacts reveals that GTOC's methodology is correct and, when applied to an appropriate base figure, should yield the desired results.[214]

198. In GTOC's direct case Exhibit EDT.3, it appears that the revenue requirement impact figure was calculated using an adjustment to relate the impact of the flow back to switched traffic sensitive and special access only. Thus, the $9.4 million relates to switched traffic sensitive and special access only. In GTOC's rebuttal, at Attachment 3, in an attempt to demonstrate that the impact is not significant, GTOC compares a column labeled "Excess Deferred Taxes" (Column A) to a column labeled "Total Access Revenues" (Column B). Attachment 3 then relates Column A and Column B to show "Deferred Tax Impact as a Percent to Total Access" (Column C). The narrative in GTOC's rebuttal implies that comparisons to revenues for the purpose of determining materiality are made using interstate switched and special access revenues only. GTOC Rebuttal at 8.

199. Comparisons of Attachment 3 data with earlier direct case filings and GTOC's COS-1 (P) 32 p. 1.2 of 2 reveal that the amounts reported in Attachment 3 actually represent the revenue requirement impact of excess deferred taxes on switched and traffic sensitive categories only (Column A) and total access revenue requirements (Column B). Logic suggests that on the basis of the relationship of GTOC's switched and special access revenues to its total access revenues, the percentage relationships shown in Column C of Attachment 3 would be nearly double what was shown. Accordingly, Attachment 3 falls short of giving a true picture of flow back impacts on either total access revenues or switched and special access revenues.[215]

200. GTOC filed corrected figures which show an $18.1 million revenue requirement impact on total access revenues for the flow back of excess deferred taxes.[216] Approximately $9.4 million of this $18.1 million related to switched and special access. Based on our analysis, we have concluded that GTOC's revenue requirements should be reduced by a total of $17.9 million, as shown in Attachment F.[217]

201. United's direct case indicates that its tariff filings reflect an excess deferred income tax reversal for its seven Tier 1 companies totaling $2.8 million. Information provided in response to the August Public Notice indicates that the United Companies did not reflect these amounts correctly on COS-1 (P)32 page 1.2 of 2, lines 400 and 500. A correct application of the TRP instructions indicates that the revenue requirement impact of a proper adjustment of the excess deferred tax flow back would be $1.4 million higher for the United Companies. Using the same $100,000-per-study-area standard for United Companies that we applied to GTOC, we will require no reduction for Carolina Telephone and Telegraph and United Inter Mountain Telephone Company-Virginia. The remaining revenue requirement impact for United is $1.2 million as shown in Attachment F.

202. Centel indicates in its direct case filing that it did not entirely reflect flow back excess deferred taxes in tariff filings. The amount of excess deferred tax not flowed through for Centel-Nevada was $557,648. Centel Direct Case Exhibit C. This impacts revenue requirements by $844,921. Moreover, Centel's response to the August 8 Public Notice indicates that Centel-Florida flowed through $268,987 of excess deferred tax, with a revenue requirement impact of $268,987. *Id.* A proper adjustment of the $268,987 yields a revenue requirement impact of $407,555, $138,000 more than Centel reflected in the TRP. Thus, we will require Centel to make corrections to reduce revenue requirements for Centel-Nevada and Centel-Florida by $845,000 and $138,000, respectively.

203. Contel also indicated in its direct case filing that it did not reflect flow back of excess deferred taxes in its tariff filings. The amount of excess deferred taxes on a total company basis, according to Contel's direct case at 6, was $785,000 for Contel of California, $765,000 for Contel of New York, $713,000 for Contel of Texas, and $540,000 for Contel of Virginia. We converted Contel's total company figures to interstate amounts by multiplying them by an interstate factor.[218] These interstate amounts were then adjusted to reflect the proper revenue requirement reduction, as follows:

	total co.	I/S factor	I/S amount	Adjustment Factor	Rev. Req. Reduction
Contel-CA	785,000	.217	170,345	1.51	258,098
Contel-NY	765,000	.216	165,240	1.51	250,365
Contel-TX	713,000	.203	144,739	1.51	219,302
Contel-VA	540,000	.279	150,660	1.51	228,273

204. Lincoln's direct case indicates that it did not take excess deferred taxes into account. Lincoln estimates, in its response to the August 8 Public Notice, that the total impact on traffic sensitive interstate access revenue requirements would be no more than $30,000. Rochester Telephone's direct case and subsequent filings in this proceeding indicate that it adjusted its rate base, but made no adjustment on line 400 or line 500 of its TRP filings. In its response to the August 8 Public Notice, however, Rochester indicates that its total company excess deferred taxes were $146,000. An application of the $100,000-per-study-area standard precludes our requiring either Lincoln or Rochester to make any corrections.

VIII. NEW ENGLAND TELEPHONE SEPARATIONS DATA

205. The *December 24 Order* found that New England Telephone (NET) had submitted only a two-page summary of interstate separations ratios for expenses and investment in each of its study areas. 3 FCC Rcd at 1289 and n.202. That Order said such data were too summary to allow for meaningful review. In order to permit us to determine whether NET has properly implemented the new Part 36 Rules, the Common Carrier Bureau directed NET to file revised cost support data at a level of detail comparable to that filed by Southwestern Bell; the Bureau reiterated the demand in its *Phase II Designation Order*. 3 FCC Rcd at 3104. NET has filed the revised cost support

as Attachment F of its Phase II direct case. The filing submitted by NET does reach the level of detail shown by the parallel Southwestern Bell filing, as directed.

A. ***Summary of Pleadings***

1. Direct Case

206. The NET Attachment F data show the development of 1988 ACAS by state (Tab 1) and the ACAS 87 Separation filing model, the phased-in allocation factor for COE Category 3 (Tab 2) and the development of various rate bases, return and tax component of the 1988 revenue requirement (Tabs 5, 6, and 7). NET also shows the development of equal access FGD minutes of use (Tab 2), a summary of the Interstate Allowances and disallowances, (Tab 9) and the ACAS input work sheet by state, which NET labels P69(P32) Extraction Report (Tab 8). A summary of tariff year amounts is included as Tab 4.

2. Opposition

207. Ad Hoc claims that NET's discussion of C&WF is far from complete. Ad Hoc Opposition at 52-55. Ad Hoc argues that NET has not presented sources or derivation of factors or basic studies, has manipulated its separation factors, and has inflated its loop investment by applying various factors which it fails to support. *Id.* AT&T alleges that NET has improperly included installation and maintenance expense associated with detariffed inside wire in its revenue requirement. AT&T Comments at 8, n **; 12, n*. AT&T also alleges that NET's channel termination data are incomplete. *Id.* at 23 and Attachment IVA.

3. Rebuttal

208. NYNEX rejects AT&T's claim that the Commission detariffed all inside wire, including wire from the protector to the equipment. NYNEX Rebuttal at 3-5. NYNEX argues that the *Detariffing Order* detariffed only the wire on the customer's side of the demarcation point, while specifically recognizing that wire from the protector to the demarcation point would remain regulated inside wire and be assigned some Account 605 expense. *Id.* at 5-6. NYNEX also states that AT&T's allegations concerning channel termination data for high capacity service do not demonstrate that NYNEX's special access demand forecasts are unreasonable, since the difference is only 0.89 percent from NYNEX's corrected forecast. *Id.* at 23-25 and Exhibit 2. NYNEX states further that the purportedly manipulated separations factors are affirmed by 1988 actual data.

4. ***Ex Parte*** **Responses**

209. The data submitted by NET in Attachment F of its direct case appear inconsistent with data shown in Attachments B and C. Further, the host/remote mileage, CM and CMM data in Attachment F are difficult to reconcile with the corresponding NET data submitted by NYNEX in Docket 80-286.[219] In response to informal questions by Bureau staff, NYNEX has submitted an *exparte* statement addressing these apparent anomalies.[220]

210. Specifically, Bureau staff observed that the loops, terminations, and mileage data in Attachment F of the NET Direct Case are inconsistent with the corresponding data shown in Attachments B and C. NYNEX responds that the data in Attachments B and C show the effect on loops, miles and terminations due to a revision that it made to reduce its Special Access revenue requirement by $9 million. This revision, it notes, is documented in CC Docket 88-1, Phase I, Exhibit 3-3, page 4. NYNEX states that this revision is not incorporated into the Attachment F data, because those data are the same data that were included in the October 2, 1987, access rates filing.

211. Bureau staff further observed that the host/remote data in Attachment F are inconsistent, for all study areas, with the corresponding data submitted by NYNEX in Docket 80-286. In the Maine study area, for example, Attachment F shows host/remote miles to be positive in 1988, whereas the Docket 80-286 submission shows such mileage to be zero in September 1986. In response, NYNEX states that the positive mileage data in Attachment F are correct. It explains that, for all New England study areas except Vermont, the Docket 80-286 submission correctly shows this mileage to be zero in September 1986 because host/remote service was introduced subsequent to that data. With regard to Vermont, however, it acknowledges that the host/remote investment and mileage data in its Docket 80-286 submission are incorrect. It concedes, for example, that the Vermont host/remote investment should not have been shown to be zero because host/remote service was introduced prior to September 1986.

212. Moreover, Bureau staff noted that in all NET study areas the projected 1988 interstate CM factors shown in Attachment F are identical to the corresponding figures shown in NYNEX's Docket 80-286 submission: the portion of CM attributed to interstate usage in September 1986. The Bureau staff therefore asked NYNEX why it is projecting that the portion of total CM attributed to interstate usage will be the same in 1988 as it was in September 1986. NYNEX responds that, because CM is a new measure on which it had no history, the 1988 projection shown in Attachment F is based on the same study used to obtain the interstate CM measurement submitted in Docket 80-286.

B. ***Discussion***

213. As we had directed, NET submitted data in Attachment F to its June 27, 1988, direct case containing the same level of detail contained in the parallel filing by Southwestern Bell. We analyzed NET's separations data and compared the investment, expense and relative-usage data to the corresponding data listed on NET's TRP and to the corresponding data submitted by NYNEX in Docket 80-286. Based on this analysis, we identified a number of data inconsistencies.

214. We are persuaded by NYNEX that all the inconsistencies between the data in Attachment F and the data in Attachments B and C are justifiable. Specifically, Attachments B and C reflect a revision made after the October 2, 1987, access rates filing, and Attachment F, which shows the data that were included in that filing, does not reflect that revision.

215. The inconsistencies between the data in Attachment F and the data submitted by NYNEX in Docket 80-286 have been adequately explained. Because host/remote service was not introduced in four study areas until after September 1986, it is reasonable that the host/remote investment for these study areas is zero in the Docket 80-286 submission, which was based on September 1986 data, and is positive in Attachment F, which is based on more recent data.

216. As to the fifth study area, Vermont, we believe that the data inconsistency is due to an error in the Docket 80-286 filing, which mistakenly shows host/remote investment to be zero in September 1986 although Vermont's host/remote service actually had been implemented before that date. Because the data inconsistency is caused by an error in the Docket 80-286 submission rather than in Attachment F, the error did not affect the data upon which the tariff filing was based.

217. We also find it reasonable that NET's CM measurements in Attachment A are identical to those in NYNEX's Docket 80-286 filing. NYNEX says that, because the new CM factor was not implemented until January 1988, NET based its 1988 projections on the same study results that are shown as September 1986 counts in its Docket 80-286 submission.

IX. GENERAL TELEPHONE OF FLORIDA

218. The *December 24 Order* noted that GTOC's Florida rates were disputed by ALC, AT&T, Western Union, and Microtel. [221] Those petitioners alleged that the GTOC Florida rates produced cross-subsidization through the "Preferred Switch Access" (PSA) tariff, that GTOC Florida failed to assign costs to non-regulated activities, and proposed rate increases contradicted observed trends. *December 24 Order*, 3 FCC Rcd at 1312-13. We found that the questions raised were valid ones, and that GTOC's reply comments were non-responsive. We ordered GTOC Florida to submit a *de novo* case to support its rates for purposes of this investigation. *Phase II Designation Order*, 3 FCC Rcd at 3104-05.

A. *Summary of Pleadings*

1. Direct Case

219. In response to the *Phase II Designation Order*, GTOC Florida has filed as a *de novo* access tariff filing its original October 1987 case, reorganized and separated from the other GTOC companies, with additional explanatory material responding to issues identified in paras. 268-271 of the *Phase II Designation Order*, and with updated demand data.[222] GTOC states that after extensive review of its October filing, it is satisfied that with few exceptions, the original filing was correct, and that it has found nothing in its October 1987 material requiring adjustment. GTOC Florida Direct Case at 28-29.

220. GTOC Florida explains that its assumptions regarding depreciation expenses were based on its knowledge in August 1987 that sizable changes in electromechanical switching equipment, analog SPC switching equipment, and circuit equipment, among other categories, were anticipated as a result of the 1988 depreciation study. GTOC accordingly included $50 million of additional depreciation expense in its 1988 estimates. *Id.* at 52-53.

221. Its central office modernization plan, GTOC Florida explains, is necessary because the 5,000 square mile area of west central Florida it serves is one of the fastest growing areas of the country. Construction expenses for this area are thus greater than for other LECs. *Id.* at 35. Further, GTOC Florida supports its demand forecasts by citing actual data through April 1988. Actual total TS minutes, GTOC Florida shows, are one tenth of one percent below its original forecasts. *Id.* at 34. Special access equivalent voice grade subscriber access lines (SALs) are also slightly below forecasted levels, due to a more rapid than expected shift from two-wire to Hi-Cap facilities. *Id.* at 35. GTOC Florida notes that special access transport demand is influenced by migration of facilities to DS1s and DS3s, and rehoming of WATS switching. *Id.* at 34, 38.

222. GTOC Florida states that it has performed a comparison of GTOC Florida rates with those of Southern Bell-Florida. GTOC Florida explains that differences in size of service area, mix of residential and business customers, proportion of payphones and usage patterns, and GTOC Florida's 25 percent per line greater central office switching investment, as well as different separations factors, account for the differences. *Id.* at 47-52.

223. Finally, GTOC Florida states that it did not include the effects of its then-proposed PSA service in its October filing due to the uncertainty and delay of the waiver process. *Id.* at 54. If PSA had been approved, however, its impact would have been very small in the aggregate, GTOC Florida avers. *Id.*[223]

2. Opposition

224. MCI and Microtel challenge the GTOC Florida direct case as failing to meet the directive of the *Phase II Designation Order* to supply a *de novo* filing.[224] Both state that GTOC Florida has simply repackaged its cost support submitted in the October filing, and argue that this cost support has already been found deficient and inadequate to justify the proposed charges. MCI Opposition at 9; Mictrotel Opposition at 3. MCI argues that GTOC Florida should be denied its proposed rate increase, and should be ordered to refund the excess from the January 1988 effective date of these unsupported rates. MCI Opposition at 9-10.

225. Microtel takes issue with some of the GTOC Florida explanations of its access rate increases. For instance, Microtel disputes the assertion of modernization costs, stating, first, that most of these costs should properly be charged to enhanced, unregulated services, and second, that GTOC Florida has not adequately demonstrated why its modernization costs are so different from those of Southern Bell in Florida. Microtel Opposition at 4. Microtel contends that the GTOC Florida cost justification is contrary to other carrier experiences. *Id.*

226. Microtel charges that GTOC has increased its Florida depreciation expense by approximately $50 million based only on an indication that the Commission might change its policy on booking of depreciation charges. Microtel states that GTOC Florida does not face competition today and will not in the immediate future, and that GTOC Florida has no basis for increasing its rates based on anticipated Commission action. *Id.* at 5. Microtel also rejects the GTOC Florida bypass argument, noting that Southern Bell is more likely to face bypass problems than is GTOC Florida, that switched access usage is increasing, that voice grade special access rates are increasing, and that intrastate switched access rates cost less than half interstate switched access in Florida. *Id.*

227. Finally, Microtel warns that the claim that the proposed PSA tariff is "practically insignificant" should be scrutinized. Microtel suggests that discrimination and cross-subsidization may be occurring, and that we must

not ignore GTOC Florida's attempt to lower switched access rates for a few customers while raising them for everyone else. *Id.* at 7.

3. Rebuttal

228. GTOC Florida states that the oppositions to its direct case lack merit. It asserts that its Phase II direct case contains substantial new information, and describes its contents. GTOC Florida Rebuttal at 17-19. GTOC Florida contends that each LEC's central office modernization plan is paced specifically with regard to unique characteristics of that LEC, and that it is not unusual or unexpected that GTOC Florida and Southern Bell have chosen different modernization schedules. *Id.* at 20. GTOC Florida supports its Phase I direct case demand showing, stating that the actuals submitted in its Phase II direct case substantiate its forecasts. *Id.* at 21. GTOC Florida states that, in Florida, the relationship of interstate special access rates to intrastate special access rates has little, if any, effect on interstate switched minutes. *Id.*

B. *Discussion*

229. The *December 24 Order* found that GTOC was not responsive to questions raised by commenters concerning GTOC Florida rate increases compared to other carriers in Florida, assignment of costs to unregulated activities, and increased expenses. 3 FCC Rcd at 1313, para. 271. The Bureau accordingly required GTOC Florida to make a *de novo* filing responsive to these concerns. *Phase II Designation Order*, 3 FCC Rcd at 3104-05, para. 16. The GTOC Florida direct case explains its increases in expenses; discusses in some detail the apparent anomaly of the comparison of its rates with those of Southern Bell-Florida; and explains its increase in depreciation expenses and the reason for its assumptions on this topic. This additional information supplementing GTOC's updated demand information suffices to persuade us that the GTOC Florida rates have been adequately supported.[225]

X. ILLINOIS BELL TELEVISION AND RADIO SERVICE

230. The *December 24 Order* concluded that the increase in Illinois Bell television rates warranted investigation. 3 FCC Rcd at 1299. That Order noted the TV User Parties' claim that rate increases were applied across the board as if television service shared multi-service facilities with other services. The TV User Parties maintained that because essentially all costs properly allocable to the television service can be identified on a direct assignment basis, the LECs should treat the television service separately from other services in applying cost allocation factors. The *Phase II Designation Order* directed Illinois Bell to respond to the TV User Parties' allegations that its television service rate increases were based upon cost adjustment factors developed for other special access services and inappropriately applied to television. 3 FCC Rcd at 3105.

A. *Summary of Pleadings*

1. Direct Case

231. Ameritech argues in its direct case that video service does share facilities with other services: in the central office, it shares floor space, aisle lighting, and so on; outside plant video facilities share the common support structure and maintenance associated with composite cable. Ameritech Direct Case at 20. While Ameritech admits that polyethylene shielded vinyl (PSV) cable is unique to video, it states that the time spent maintaining

composite cable is assigned to the same maintenance expense account whether the trouble is in the PSV portion or in the standard copper pairs. *Id.* Further, Ameritech states that interoffice cable, shared by all services, is being replaced with fiber optic, and video is assessed its share of this cost.

232. More significantly, Ameritech argues, the fact that video service utilizes circuit equipment that is not shared with other services is irrelevant; each special access service uses equipment unique to it, but Part 36 and Part 69 do not contemplate the separate identification of such equipment. *Id.* at 20-21. Ameritech asserts further that the TV User Parties' claim that changes in jurisdictional separations should have no impact on video service because broadcast transmission is defined as jurisdictionally interstate merely reflects the petitioners' misunderstanding of separations cost allocation. *Id.* Ameritech contends that the effect of the Part 67-to-Part 36 changes is to spread costs across all operations, rather than to associate costs with specific operations and work functions. *Id.* at 21-23. Ameritech contends that the net effect of the Part 36 and Part 69 changes is to increase by 73 percent Illinois Bell's General Support Facilities investment allocated to special access. *Id.* at 24.

233. Ameritech also argues that no direct assignment is appropriate for special access services, since the same argument could be made for each service, with no allowance for recoupment of overhead costs. *Id.* Ameritech also states that, despite the increase, the Illinois Bell video rates remain below fully distributed cost. *Id.* Finally, Ameritech states that a portion of overhead costs has been properly assigned to video in a manner consistent with the Commission's rules, and that the TV User Parties wish to be given special treatment and to modify the rules. *Id.* at 25.

2. Opposition

234. The TV User Parties oppose Ameritech's direct case assertions, stating that Ameritech has ignored many of the issues those parties raised, has mischaracterized their arguments, and has failed to respond to the directives of the Bureau in the *Phase II Designation Order*. In particular, the TV User Parties claim that Ameritech has failed to demonstrate the sufficiency of its data and analysis unit investments and costs. TV User Parties Opposition at 5-6.[226] TV User Parties also charge that Ameritech used inappropriate cost allocation procedures and attempted to charge as new equipment video facilities that have not been replaced or upgraded. *Id.* at 6-8. Further, TV User Parties assert, Ameritech mischaracterizes the TV User Parties Opposition in Phase I by implying that the Commission's rules preclude it from excepting video service from the multi-use, dual jurisdiction calculation of costs. *Id.* at 9-10.

235. TV User Parties also contend that they do not, as Ameritech alleges, seek to be granted special treatment or to be excused from their fair share of overhead costs. The TV User Parties argue only that they should be exempted from Ameritech's application of a "closure factor" which is meant to account for all the costs assignable to facilities (including overhead) which are multi-service and dual-jurisdictional.[227] *Id.* at 11-12. The closure factor, according to TV User Parties, is intended to correct the lack of precision and completion in the direct assignment of such multi-service, dual-jurisdictional services. TV User Parties contend that because video service uses readily identifiable plant dedicated to its use on an exclusively interstate basis, use of the closure factor results in an arbitrary inflation of claimed television service costs. *Id.* at 12.

3. Rebuttal

236. Ameritech replies that its Illinois video rates are just and reasonable, and that the rate increase included in its annual 1988 access tariff filing was driven by the increase in special access revenue requirement, not by a change in unit costs. Ameritech Rebuttal at 21. Ameritech states that the TV User Parties' comparison of Illinois Bell's current video unit costs with 1983 pre-divestiture costs is not valid. *Id.*[228] Ameritech again asserts that the TV User Parties are requesting special treatment with regard to overhead costs, and states that the individualized approach requested by the TV User Parties would require special studies whose cost would far exceed the entire annual revenue from the TV User Parties' video service. *Id.*

B. *Discussion*

237. Our review of the pleadings and support documentation reveals a philosophical difference between the TV User Parties and Ameritech over how costs for individual special access services -- *e.g.*, telegraph, voice grade, Hi-Cap -- should be determined. The TV User Parties argue that, because television service plant is identifiable and separable from other special access service plant, television service rates should be based only or TV-specific costs; thus, increases in TV rates should be allowed only if Ameritech can show that increases have occurred in TV-specific expenses on capital investment, or if there has been a substantial reduction in TV service demand. TV User Parties Opposition at 2. Ameritech, conversely, argues that rates for any particular special access service are not fixed, but are part of an overall scheme of revenue requirement recovery, and as such will be affected by changes that are not directly related to that particular service. *See generally*, Ameritech Direct Case. Ameritech distributes the total projected revenue requirement to the various special access services and, through an allocation procedure, ensures that special access users will pay rates sufficient to recover these costs.

238. The argument between these parties is not, then, how these rates are calculated: in essence, Ameritech does exactly what the TV User Parties claim. The TV User Parties would like to have their costs segregated from other special access costs. Ameritech recovers some of its revenue requirement by averaging the costs over a number of special access services. The TV User Parties have failed to provide any basis for treating them differently than any other user of a special access service; they make a case only for their own preference that the calculation be performed in another way that would be beneficial to them. The prescribed cost apportionments *(e.g.*, regulated-unregulated costs, jurisdictional separations, ICAM, Part 69 access elements) all use general allocation factors to apportion some costs that cannot readily be attributed to a particular category. The "closure factor" appears to perform the same function. The TV User Parties have not demonstrated that greater precision should reasonably be expected in these circumstanes. Accordingly we will not order modifications in the Illinois Bell television service charges.

XI. NEW YORK TELEPHONE

A. *New York Telephone's Loop Counts*

239. Western Union questioned the New York Telephone (NYT) baseline data in a motion[229] which asked this Commission to investigate discrepancies between data NYT filed with the New York Public Service Commission (NYPSC) on December 31, 1987, and other data NYT provided to this Commission in the October 2, 1987, Annual 1988 Access Tariff filing and NYT's January 25, 1988, Phase I direct case. The Western Union Motion said that NYT's submissions to this Commission used a projected loop count of 538,352, but NYT's submission to the NYPSC showed its interstate special access loop count as only 500,630 and declining. The *Phase II Designation Order* directed NYT to respond to the allegations in the Western Union motion. 3 FCC Rcd at 3104. Although NYT did adopt methods to derive projected costs from baseline costs, the record demonstrates that all of the NYT calculations for 1988 access rates were based upon inaccurate baseline data that inflated the total C&WF investment.

1. Pleadings

a. NYT Response

240. In its Phase II direct case, NYT provides the following explanation of the 1988 loop count it submitted to this Commission: NYT states that the projected number of loops is developed indirectly as the result of a forecast of the number of CTs that will be in service in 1988 multiplied by an expected loop-to-channel termination ratio. The expected loop-to-channel termination ratio is based on the historical relationship of CTs and loops. NYT states that its annual 1988 access tariff filing was based on the June 1987 loop-to-channel termination ratio of 1.47, adjusted downward to 1.4577 to reflect a slight trend in the number of CTs required per loop observed between August 1986 and June 1987. NYT applied this adjusted ratio to its CT forecast to produce a projection of 538,352 loops for 1988.

241. NYT maintains that the difference between this projection and the results of the loop count study it performed under the direction of the NYPSC is due to a switch from the TIRKS Engineering database to a Carrier Access Billing System (CABS) database. NYT states that the TIRKS data were used in its access tariff filing because those were the only data available at that time. NYT states that it was directed by NYPSC to file a loop count based on more recent data and that by then the CABS database was available. NYT maintains that it chose to use CABS because the CABS data are more accurate than the TIRKS data. Finally, NYT states that it did not update the forecast it had submitted to this Commission with CABS data because we did not specifically request such an update. NYT also claims that its 1988 special access rates will result in a rate of return under authorized levels even using the updated data. It says it earned 11.63 percent in the first quarter of 1988. Therefore, NYT contends that it should not be required to make rate adjustments to reflect the revised loop count data.

b. Oppositions

242. Ad Hoc supports Western Union's contention that NYT overstated the number of loops used to project the costs for special access in its annual 1988 access tariff filing. Ad Hoc Opposition at 57. Ad Hoc states that NYT does not dispute that its projected 1988 special access loops of 538,352 and the derived loop-to-channel termination ratio of 1.4577 are overstated. Ad Hoc notes that NYT indicates that, at the time its direct case was filed, it was aware that the 1988 forecast of special access loops had declined by 40,000 loops. *Id.* Ad Hoc disagrees with NYT's argument that the original forecasts should be accepted because those forecasts were based on historic data available at that time. Further, Ad Hoc asserts that NYT appears to contend that, if this Commission had asked for revised data, NYT would have provided it. *Id.* Ad Hoc argues that this demonstrates NYT's total lack of commitment or obligation to this Commission or the ratepayers. *Id.*

243. Ad Hoc also disagrees with NYT's argument that Western Union's adjusted private line interstate loop counts are inaccurate. *Id.* at 60-61. Ad Hoc maintains that Western Union did adjust the NYPSC loop count for WATS, digital data, video, and wideband for the data Western Union provided to the Commission. *Id.* at 62. Further, Ad Hoc agrees with Western Union's contention that NYT filed data in its Phase I direct case that were inconsistent with data filed with the NYPSC and that NYT's special access rates were based on inaccurate interstate private line loop counts. *Id.* Ad Hoc contends that NYT is misleading when it implies that the actual number of interstate private line loops declined by 40,000 when comparing TIRKS data with CABS data. Ad Hoc asserts that those 40,000 loops did not physically exist but, rather, were the product of an inaccurate database that NYT corrected. *Id.*

244. Ad Hoc further supports Western Union's showing that the data filed with NYPSC produces a loop-to-channel termination ratio of 1.26. Ad Hoc argues that the use of the loop counts and channel termination by NYT results in a ratio of 1.34, not the 1.53 claimed by NYT. Ad Hoc claims that NYT has miscalculated this ratio. Additionally, Ad Hoc states that NYT admits that the adjusted ratio of 1.4577 used in its annual tariff filing and Phase I direct case was grossly overstated, and that a factor of 1.28 is appropriate *Id.* at 63.

245. Ad Hoc contends that NYT has not supported its challenge to Western Union's showing that NYT reported a five percent AT&T collocation factor in the historic period and only one percent collocation for the forecast period. *Id.* at 63. Ad Hoc states Western Union shows that data submitted by NYT to the NYPSC show collocation factors of 14 percent (two wire circuits) and 24 percent (four wire circuits), which differ from collocation factors of 14.8 percent (historical) and 13.6 percent (prospective) derived from the data NYT reported to the Commission. Ad Hoc dismisses NYT's contention that it used more current CT data corrected for billing adjustments as unverifiable and unresponsive to Western Union's argument that the data are inconsistent. *Id.*

246. Ad Hoc opposes NYT's claim that the overstatement of private line interstate factors does not require a rate adjustment, and it challenges NYT's claim that its 1988 special access rate of return will be deficient even if the adjusted data are used to compute the return. *Id.* at 64. Ad Hoc maintains that a 23 percent

overstatement of interstate private line separations factors warrants a rate adjustment. Ad Hoc contends that NYT changed its procedures for General Support Facilities and Information Origination / Termination investment, and its separations treatment of wideband Hi-Cap exchange facilities. Ad Hoc argues that NYT also used revised separations quantities and demand factors to recalculate its revenue projections. *Id.* at 65-66. Ad Hoc states that NYT has provided no support or rationale for these revisions. Additionally, Ad Hoc asserts even with these adjustments, revenues still exceed revenue requirement by $9 million. *Id.* at 66.

c. Rebuttal

247. NYT replies in rebuttal that the private line cost data it submitted to this Commission and the NYPSC are consistent. NYT explains that it did not submit a revised 1988 loop forecast to reflect a decline of 40,000 loops in its Phase I Direct Case because this Commission had asked the LECs only to reconcile the PYCOS period historic data with their 1988 projections. NYT Rebuttal at 26. NYT disagrees with Ad Hoc's suggestion that this explanation is evasive. Further, NYT contends that it complied with the data requested in the Phase I and Phase II Designation Orders regarding loop counts and special access rates. NYT asserts that, after taking into account the decline of 40,000 loops occurring after October 1987, its 1988 special access rates were still reasonable. *Id.* at 27.

248. NYT states that, contrary to Ad Hoc's claim, it has adequately refuted Western Union's private line loop counts. NYT maintains that the interstate private line loop count derived from the CABS loop count for late October to early November is approximately 500,000. *Id.* at 30 (referring to Exhibits IV.4 and IV.5). NYT asserts that after converting the NPYSC data to separations loops, the NYPSC data are consistent with NYT's direct case data. NYT states that Western Union calculated a count of 467,914 when the actual count was 500,630. *Id.* at 30, n. 37.

249. NYT further replies that its loop-to-channel termination ratio for 1988 should be approximately 1.28 after the NYPSC data are revised for normalized demand. NYT states that normalization involved a subtraction of excess billed units from the monthly reported units based on a carry-back of billing claims. Finally, NYT contends that if normalized data had not been used it would have forecast much lower special access demand and revenues for 1988. *Id.* at 31.

250. NYT states that it did present correct collocation ratios and demonstrated that Western Union was wrong in claiming that its historic and prospective ratios were 5 and 1 percent, respectively. *Id.* at 31, n. 39. NYT contends that Western Union's calculations of the collocation factors based on NYT's NYPSC data are incorrect because Western Union used the NYPSC data without adjusting for separations loops and without converting the CT data to the types of demand associated with separations loops. NYT states that it corrected Western Union's calculations to reflect normalized demand, and that the resulting collocation factor is 15.9 percent, which it argues is a reasonable fluctuation from NYT's historic and prospective views. *Id.* at 32 (citing Exhibit 3).

2. Discussion

251. We find that the original NYT filing seriously overstated interstate private line loops, and we therefore disallow $62.3 million in interstate special access C&WF investment. We base this conclusion on NYT's direct cases in both phases of this docket. In its annual 1988 access tariff filing and its Phase I direct case, NYT reported an historic interstate private line loop count of 587,822. Using that historic demand, it applied a loop-to-channel termination ratio of 1.4577 to a channel termination count of 376,467, to obtain a prospective interstate private line loop count of 538,352. NYT Phase I Direct Case, Appendix I, at 2.[230] Subsequently, NYT presented testimony to the NYPSC indicating a loop count of 413,038 for October and November 1987. Western Union Motion Appendix 1, Tab C.[231] NYT states that, using a more accurate loop-to-channel termination ratio of 1.28, it derived a revised 1988 loop count of 413,534.[232] If Hi-Cap loops are included, this count becomes 418,244.[233] Thus, NYT's access tariff filing, which was based upon 538,352 projected loops, was incorrect.

252. NYT explains this discrepancy by stating that the decrease in interstate private line loops occurred because it switched from the TIRKS engineering database to the CABS billing system as the source of its loop counts. It maintains that, because of this change, interstate private line loops decreased by approximately 40,000 loops from August 1987 to September 1987. NYT Direct Case at 27. Second, NYT submits that the demand for voice grade special access has decreased dramatically in the last quarter of 1987 and the first quarter of 1988, thus accounting for the additional decrease in loops. NYT further claims that changes in demand produced further decreases in historic loop counts when it normalized the loop data to reflect billing adjustments. We believe NYT should have disclosed, before the effective date of the tariffs, its belief that the underlying data for its access tariffs were inaccurate. Common Carrier Bureau orders adopting tariff review plans describe such a continuing obligation to correct erroneous data and rates.[234] In any event, the record now demonstrates that a correction is required.

253. NYT admits that its loop-to-channel termination ratio should be 1.28. NYT Phase II Direct Case at 30 and Exhibit IV.6. When applied to a channel termination count of 337,637, this ratio results in a loop count of 418,244,[235] which must in turn result in a decrease in investment. We believe that this revised count, as NYT concedes, more accurately reflects the demand for loops it will experience in 1988. Using the revised loop count of 418,244, we calculated that the total C&WF special access investment of $329.4 million reported by NYT should be reduced $62.3 million to $267.1 million.[236] This reduction in investment produces a revenue requirement of $16.1 million, and we direct NYT to file a revised tariff reflecting this reduction, in accordance with the ordering clauses below. We are not persuaded by NYT's claim that we should not adopt a disallowance because its first quarter 1988 actual data indicate other errors in NYT's projections that will offset the effects of the inflated base line loop counts. The oppositions have raised substantial questions about the accuracy of the NYT actuals. We will accordingly use the base case, revised to reflect the more accurate CABS loop counts, to determine the NYT disallowance.

B. NYT's Revenue Requirement Adjustment

1. Pleadings

254. MCI states that because NYNEX has corrected various errors in separations procedures, demand forecasts, and ratemaking methodologies in its direct case, NYNEX's revised special access revenue requirement has been reduced to $381 million while its projected special access revenues will total $390 million. MCI Opposition at 17.[237] NYNEX agrees that these numbers are correct. NYNEX Rebuttal at 32. MCI contends that the Commission should order NYNEX to reduce rates by 5.66 percent for the remaining five months of 1988, since the corrected revenue requirement includes a 12 percent rate of return,[238] and because the process for customers to obtain refunds (filing a complaint) is far more difficult than the process a carrier follows to correct an underearning situation. MCI Opposition at 18.

255. NYNEX replies that while MCI's argument has merit in theory, the fact that NYT is earning 11.6 percent on special access according to NYT's Form 492 makes the argument academic. NYNEX Rebuttal at 32. NYNEX contends that MCI's proposed $9 million reduction in NYT's revenue requirement reflects MCI's lack of understanding of the difference between a forecast and an actual result. NYNEX explains that both the original special access revenue requirement ($390 million) and the revised revenue requirement ($381 million) were estimates based on the available historic data and predictions about the effects of new accounting, separations, and access rules. The actual rate of return, however, shows the accuracy of these estimates and predictions, NYNEX states, and forms the basis for a determination as to whether corrective tariff revisions are necessary. *Id.* at 33.

2. Discussion

256. We have found that a special access revenue requirement reduction of $16.1 million will accurately reflect the effect of NYT's error. We are not persuaded by NYT's claim that the erroneous revenue requirement estimate is likely to be offset by overestimated revenues. We note that NYT's Form 492 for the second quarter of 1988 shows a special access rate of return of 13.23 percent. In view of NYT's first quarter earnings of 11.63 percent, it is apparent that NYT is very close to its maximum earnings on special access for the first half of 1988. Thus NYT's rate of return for the remainder of the access year merits careful monitoring.

XII. MISCELLANEOUS ISSUES

A. *Hi - Cap Equivalency*

257. The *Phase II Designation Order* required the LECs to explain how the cost of high capacity facilities is reflected in cost assignments. 3 FCC Rcd at 3104 & n.12. Specifically, the Order noted that some LECs have been charged with allocating costs on the basis of the number of multiplexed channels derivable from such facilities, rather than the cost of the facilities themselves. *Id.* at 3105. The Order directed LECs to explain how their costing procedures are consistent with Part 36 of the rules. Further, it directed any LEC that determined that its methodology was inconsistent with the rules to file a tariff revision correcting its rates. *Id.* No such revisions were filed.

1. Direct Cases

258. Ameritech states that costs associated with wideband circuit equipment are separately identified and directly assigned to the appropriate jurisdiction where possible. Ameritech Direct Case at 5. To determine the net increase in the amount of high capacity C&WF Category 3 investment, Ameritech multiplies Hi-Cap demand by rate element by the respective C&WF Category 3 unit investment amount. *Id.* at 13.

259. Bell Atlantic states that costs that were identified and directly assigned as wideband exchange line in Part 67 are now included within total wideband and exchange trunk C&WF investment and directly assigned in Part 36. Bell Atlantic Direct Case Appendix D-1 to D-3. Bell Atlantic then directly assigns wideband investment to the appropriate Part 36 separations category and jurisdiction, thereby minimizing the potentially disparate results of converting various multiplexed facilities to voice grade equivalent. *Id.* at D-3. Bell Atlantic observes that the change in categorization under Part 36 had virtually no impact on its separations allocation under Part 67, all else being constant. *Id.*

260. NET explains that the costs of wideband and exchange trunk C&WF are divided into multiplex Hi-Cap services and point-to-point Hi-Cap services. NET Direct Case at 28-31 and Exhibit III.1. Multiplex Hi-Cap facilities are allocated among categories on the basis of working voice grade circuits. *Id.* Point-to-point facilities are directly assigned to private line interstate, as is wideband circuit equipment used on point-to-point Hi-Cap facilities. *Id.*

261. US West shows that it classifies Hi-Cap C&WF facilities as wideband private line for cost assignment purposes. US West Direct Case at 20 and Exhibits 7, 8. The associated wideband loop investment is computed by multiplying the forecast wideband loop by an average cost per wideband loop, US West explains. Finally, US West directly assigns wideband investment to the appropriate jurisdiction. *Id.*

262. Pacific Bell classifies Hi-Cap facilities as wideband private line for cost assignment purposes, and assigns cost based on the appropriate average book cost. Pacific Bell Direct Case at 11-12. Nevada Bell shows category assignment of COE circuit investment and outside plant investment. Nevada Bell Direct Case Exhibits 4 & 7. New York Telephone states that costs associated with point-to-point Hi-Cap are directly assigned to the interstate operation. NYT Direct Case at 23-25.[239]

2. Opposition

263. Ad Hoc claims that Ameritech, Bell Atlantic, NET and US West have not fulfilled the requirements of the *Phase II Designation Order*. Ad Hoc Opposition at 10. Ad Hoc argues that the separation methods used to determine Hi-Cap costs will assume increasing importance due to the increasing use of DS1 and DS3, and that separation techniques used to develop the special access revenue requirement may result in a large and growing degree of overt cross-subsidization of Hi-Cap by voice grade and switched access services. *Id.* at 10-11. Ad Hoc states that neither Bell Atlantic nor Ameritech has given any response at all to our inquiries regarding reflection of multiplexed channel equivalencies in cost assignment. *Id.* at 50.

3. Rebuttals

264. Bell Atlantic responds that Ad Hoc's comments concerning cross subsidization of Hi-Cap service constitute a discussion of strategic pricing, an issue presently under consideration in another proceeding. Bell Atlantic Rebuttal at 2 (referencing CC Docket No. 85-166, Phase II, Part 1. *See* Memorandum Opinion and Order, CC Docket No. 85-166, Phase II, Part 1, FCC 88-321, adopted Oct. 13, 1988). US West states that Ad Hoc is simply wrong in claiming that US West did not explain how Hi-Cap costs are assigned. US West Rebuttal at 17 (citing US West Direct Case at 20). NYNEX states that Ad Hoc's Hi-Cap allegations do not apply to NYNEX. NYNEX Rebuttal at 17. It summarizes the material presented in the New York Telephone and New England Telephone direct cases. *Id.* at 18-19. Ameritech responds that it originally commingled Hi-Cap costs in COE Category 4.23; but, Ameritech states, it corrected this error in Phase I by segregating Hi-Cap investment from COE Category 4.23 before adjusting for prospective demand. Ameritech Rebuttal at 14-15.

4. Discussion

265. Having reviewed the direct cases, Ad Hoc's opposition, and the rebuttal filings, we are persuaded that the LECs have assigned costs associated with wideband facilities in a manner consistent with the separations procedures.[240]

B. *Alleged Data Inconsistencies*

266. In the oppositions to the original October 1987 access tariff filings, and again in the Phase I oppositions, challenges were lodged against several direct cases on the grounds that the LECs had filed data here that were inconsistent with data filed elsewhere, in this proceeding or another, or, in some cases, before other regulatory agencies. *See, e.g.*, AT&T Petition for Rejection and/or Suspension and Investigation in the Matter of Annual 1988 Access Charge Tariff Filing, Appendix D-12; Western Union Phase I Opposition, *passim*. The *Phase II Designation Order* at para. 20 directed the LECs to explain any inconsistencies in filings associated with the 1988 annual access tariffs, other Commission proceedings, or state commission proceedings.

1. Pleadings

267. Most of the LECs that respond to claims that data filed in this proceeding are inconsistent with data filed in the Joint Board proceedings [241] state that the data filed in this proceeding and those filed in the Joint Board proceeding cover different time periods, and that the two should therefore not be expected to be consistent.[242] GTOC contends that COE Category 4 and C&WF data in the Joint Board proceeding were derived from the GTOCs' June 1987 Study Area Data Base Files (SABAS), generated in November 1987. GTOC Direct Case at 55. The data were later reprocessed to correct errors and omissions, so that some of the June 1987 data now available do not match the data obtained for the December 1987 filing. Further, GTOC explains, the Joint Board data were accurate at the time, but may not match the corrected data in the instant investigation. *Id.* BellSouth, however, in preparing to respond to our request, found several miscalculations in its Joint Board termination count data. BellSouth Direct Case at 12. Southwestern Bell, challenged by AT&T for having inconsistent filings in CC Docket Nos. 87-113, 80-286, and the instant proceeding, responds that its filing in the Joint Board proceeding was premised upon December 1984 data, the filing in Docket 87-113 reflects May 1985 data, and the filing in this proceeding uses January to March 1987 data. Southwestern Bell Direct Case at 8-9. Southwestern Bell argues that it experienced significant changes in investment in the course of the last three years; its NTS COE investment increased faster than its TS COE investment due to the replacement of electromechanical switching equipment with digital. *Id.*[243]

268. No further arguments are offered regarding inconsistencies in data in various proceedings.

2. Discussion

269. We have examined the arguments raised here, and have reviewed the data submitted here and in the other proceedings. While we have seen the discrepancies noted by oppositions, we accept the LECs' explanations as at least partial justification. We do not believe further adjustments are warranted to reflect such alleged inconsistencies.

XIII. CONCLUSION AND ORDERING CLAUSES

Conclusion

270. The Common Carrier Bureau initiated the investigation of issues considered here because of its concern about apparent inconsistencies and inaccuracies in the LECs' annual 1988 access tariff filings submitted in October 1987. This investigation was prompted in substantial part because the LECs proposed significant increases in costs, while demand was in many cases declining substantially, based upon the LECs' own projections. Despite the many partial explanations offered, and the assurances of the LECs that no exact parallel exists between the development of revenue requirements and the development of demand projections, the Bureau concluded that the proposed discrepancies required resolution. To that end, the Bureau suspended a number of tariff filings, used Phase I of this investigation to consider the lack of consistency between cost and demand showings, and examined the underlying data and methodologies in Phase II.

271. We have determined, based on our analysis, that the LECs have significantly overstated revenue requirements, and that substantial disallowances are therefore necessary. We are requiring the affected LECs to revise their rates to reflect these revenue requirement disallowances. Due to our recent determination that 1989 access tariff filings should become effective April 1, 1989, the LECs may decide to revise their 1988 rates to reflect the disallowances ordered here. Alternatively, the LECs may elect to leave their 1988 rates intact, and to revise their 1989 rates to reflect these disallowances. Of course, the LECs may also effect these disallowances through the use of refunds.

272. The affected LECs are accordingly directed to file by January 6, 1989, either tariff revisions effecting these disallowances in the remainder of the 1988 access year to be effective on not less than 15 days' notice (that is, through March 1989), a refund plan, or a letter of intention that their 1989 access tariff filings (due to be filed on December 30, 1988) will be revised by a filing made on

January 13, 1989 (with an effective date of April 1, 1989) to effect the disallowances. In filing tariff revisions to effect the disallowances we are ordering here, the LECs should include in their description and justification a full explanation on a per-element basis of the apportionment of the revenue requirement disallowance. The LECs should explain their methodologies for assigning and allocating revenue requirement adjustments among rate elements. These data should be calculated on the same level of aggregation as the LEC uses for its tariff filing.

273. Should a LEC assert that a 1988 revenue shortfall will affect the revenue disallowances imposed here, that LEC must fully explain its revenue shortfall. The LEC must calculate its revenue shortfall by averaging its actual 1988 revenue over the 1988 access tariff 15-month period. Using its actual revenues data for January through September 1988, the LEC should calculate a monthly average and thus a 15-month figure. Alternatively, to account for seasonal variations, the LEC may create a ratio by comparing January through September data for 1987 with January 1987 through March 1988 data; this ratio can then be applied to the LEC's January through September 1988 data to yield a January 1988 through March 1989 figure.

274. In brief, our investigation reveals the following errors and shortcomings:

(a) Many LECs overestimated their regulated inside wire costs; correction of these miscalculations (adjusted to include overhead expense) results in a disallowance of approximately $96 million.

(b) NET improperly calculated its COE Category 3 interstate allocations; correction of this allocation results in a revenue requirement disallowance of about $3 million.

(c) The GTOCs improperly categorized costs for COE Category 4.23 by using only end terminations, instead of total terminations; correction of this categorization error may result in a further disallowance.

(d) All the LECs except SNET have failed to respond adequately to, or to request a waiver from, the requirements of the *Phase II Designation Order* that they provide both end and intermediate termination counts.

(e) Some LECs have overassigned costs to the interstate jurisdiction by miscalculating the interstate CM factors which are the basis of jurisdictional allocation. The lack of sufficient relevant data resulted in our developing a surrogate methodology to correct this; we are imposing a disallowance of $45 million.

(f) Wisconsin Bell overstated interstate gross investment in C&WF Categories 1 and 2 by $1.76 million; this results in a $390,000 reduction of Wisconsin Bell's revenue requirement.

(g) Ameritech overprojected demand for interstate special access loops, and its actual investment in interstate special access loops was $35 million less than its projected investment.

(h) We have calculated disallowances totaling more than $89 million to reduce revenue requirements because several carriers' projected investment in special access C&WF and COE Category 4.23 circuit equipment significantly exceeded their actual investment.

(i) Carriers' failure to flow through excess deferred taxes, or to reduce their expense in light of decreasing tax rates, results in revenue reductions of nearly $38 million.

(j) New York Telephone's inconsistent filings with this Commission and with the New York State commission prompted further inquiry; to correct NYT's overstatement of interstate private line loops, we are disallowing $16 million in its interstate special access C&WF revenue requirement.

275. These disallowances correct for misallocations, misstatements, errors, and miscalculations. Both this Commission and the Common Carrier Bureau have consistently and repeatedly impressed upon the local exchange carriers our strong desire that tariff filings be accurate, clear, and reliable. With this Order we terminate our investigation into most of the issues raised in this proceeding, but we do not terminate our interest in the resolution and correction of the matters we have considered here. This Order attempts to clarify for filing carriers our expectations and requirements. We urge the LECs to keep these expectations and requirements before them when they file new access tariffs.

276. We emphasize to the LECs to be aware that a direction to reduce revenue requirements in a specific special access element cannot be implemented merely by shifting costs from element to element. We have prepared and included Attachments I and J to display our calculation of the corrections for overstatement of revenue requirements for interstate COE Category 4.23 circuit investment and for interstate C&WF.[244] We will use these calculations to evaluate carefully the filings made in response to this Order, to assure that disallowances are actual reductions, and not merely cost shifts among elements.

Ordering Clauses

277. IT IS ORDERED, in accordance with the authority of this Commission under Sections 4(i) and 201 through 205 of the Communications Act, 47 U.S.C. §§ 4(i), 204 - 205, that local exchange carriers SHALL FILE on January 6, 1989, either revisions to their 1988 access tariffs effecting the disallowances ordered herein, refund payment plans effecting the disallowances ordered herein, or letters of intention that their 1989 access tariff filings will be revised to effect the disallowances ordered herein. Affected LECs and the required disallowances are shown in the consolidated disallowances tables at Attachments G and H.

278. IT IS FURTHER ORDERED that local exchange carriers electing to effect the ordered disallowances in their 1989 access tariffs SHALL FILE such tariff revisions on January 13, 1989, to be effective April 1, 1989.

279. IT IS FURTHER ORDERED that the GTE Operating Companies SHALL FILE within 10 days after the release of this Order 1988 actual cost and terminations data by study area, as described in paragraph 87 of this Order.

280. IT IS FURTHER ORDERED that New England Telephone and Telegraph Company SHALL FILE tax calculations and reductions as discussed in paragraph 193 of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Annual 1988 Access Tariff Filings, 3 FCC Rcd 1281 (1987) (*December 24 Order*).

[2] Annual 1988 Access Tariff Filings, CC Docket No. 88-1, Phase I, 3 FCC Rcd 507 (1988) (*Phase I Designation Order*). The Bureau considered Phase I filings when it decided not to extend most of the suspensions. Annual 1988 Access Tariff Filings, CC Docket No. 88-1, Phase I, 3 FCC Rcd 2043 (1988) (*Phase I Order), reconsideration pending*. The Bureau considered only the narrow question of apparent cost and demand inconsistencies in that Order. The *Phase I Order* examined the apparent inconsistencies between the methodologies that LECs with suspended rates used to develop special access revenue requirements and the methodologies those LECs used to develop demand quantities. The *Phase I Order* concluded that, with one exception, those LECs had, through revision and justification, brought their tariff filings to the same level of consistency as the filings that were not suspended. Accordingly, the Bureau determined that all but one of the previously suspended tariffs should be allowed to become effective as revised, but should remain under investigation. The continuing suspension for the GTE Operating Companies was lifted by a subsequent Bureau Order. Annual 1988 Access Tariff Filings, GTE Telephone Operating Companies, CC Docket No. 88-1, Phase I, Part 2, DA 88-530, released Apr. 14, 1988. That tariff, too, remains under investigation here.

[3] Annual 1988 Access Tariff Filings, CC Docket No. 88-1, Phase II, Order Designating Issues for Investigation, 3 FCC Rcd 3103 (1988) (*Phase II Designation Order),* Erratum, 3 FCC Rcd 3761.

[4] The *Phase II Designation Order* invited parties to complete their pleadings from Phase I as well. A list of filing parties appears as Attachment A to this Order; we will use herein the abbreviated party names listed in that Attachment.

[5] *See* Detariffing the Installation and Maintenance of Inside Wiring, Second Report and Order, CC Docket No. 79-105, 51 Fed. Reg. 8,498 (Mar. 12, 1986) (*Detariffing Order), recon.*, 1 FCC Rcd 1190 (1986), *further recon.*, 3 FCC Rcd 1719 (1988), *petition for review docketed sub nom.* National Association of Regulatory Utility Commissioners (NARUC) v. FCC, No. 86-1687 (D.C. Cir. Dec. 11, 1986); Modifications to the Uniform System of Accounts for Class A and B Telephone Companies, 48 Fed. Reg. 50,534 (Nov. 2, 1983) (*USOA Order).* In a physical sense, inside wire describes the "customer premises" portion of the telephone plant that connects station components to each other and to the telephone network. In combination with customer premises equipment, inside wiring constitutes all telephone plant located on the customer's side of the demarcation point marking the end of the telephone network. *See* 47 C.F.R. § 68.3(p). For accounting purposes, inside wiring includes both the costs of the wiring described above and the labor and other costs associated with the installation of that wiring on the customer's side of the demarcation point.

[6] *See USOA Order.* In addition, this Commission had previously required that inside wiring, which had been capitalized in Account 232 (currently Account 2321), be treated as an expense in Account 605 (currently Account 6362). *See* Amendment of Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies, CC Docket No. 79-105, 85 FCC 2d 818 (1981).

[7] Separation of Costs of Regulated Telephone Service from the Costs of Nonregulated Activities, CC Docket No. 86-111, 2 FCC Rcd 1298 (*Joint Cost Order), modified on recon.*, 2 FCC Rcd 6283 (1987), *appeal docketed sub nom.* Southwestern Bell Corp. v. FCC, No. 87-1764 (D. C. Cir. Dec. 14, 1987) and National Telephone Cooperative Association v. FCC, No. 87-1771 (D.C. Cir. December 15, 1987), *petitions for further recon. pending.*

[8] 47 C.F.R § 68.3. *See generally* Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network, Notice of Proposed Rule Making, CC Docket No. 88-57, 3 FCC Rcd 1120 (1988) (*Docket 88 - 57 NPRM).*

[9] This wiring is described as "network terminating wire" when connected to a private branch exchange (PBX). Contrary to the practice of certain carriers, this wiring is not classified as inside wiring. *See* note 5, *supra.*

[10] 47 C.F.R. §§ 36.142(e), 36.331(b). For a definition of SPF, *see infra* n.44.

[11] *Access Charge Rules*, 52 Fed. Reg. 37,308; 37,312; 37,313; and 37,314 (Oct. 6, 1987) (to be codified at 47 C.F.R. §§ 69.303, 69.401(c), 69.501(c)).

[12] These LECs are Ameritech, Bell Atlantic, BellSouth, GTOC, NYNEX, Pacific Telesis, Southwestern, United, and US West.

[13] Bell Atlantic further states that because certain costs, including pensions, benefits, and social security, are included under Part 32 of the Commission's Rules but were not included under Part 31, its actual decrease in total maintenance costs is even larger than indicated. Bell Atlantic Direct Case at Appendix A, A-2. Moreover, Bell Atlantic argues, in addition to directly assigned costs, a number of other costs are allocated to regulated Common Line wire as a result of the Part 36 and Part 69 rules. For example, under Part 69, the investment-related (General Support Facilities, or GSF) costs now exclude investments associated with Subscriber Line Plant, which, Bell Atlantic states, is a substantial amount. This will decrease the allocation denominator, resulting in an increase in the percentages allocated to other expenses of plant. Consequently, Bell Atlantic avers, even though there is no change in the absolute level of expenses to be allocated, or the absolute amount of investment, the allocation of costs to the remaining classes of investment will increase. *Id.* at A-3.

[14] BellSouth states that these expenses are allocated to common line wire based on the relative amount of interstate embedded wire investment, Account 232 under Part 31 and Account 2321 under Part 32, related to total interstate station investment. BellSouth Direct Case at 4.

[15] BellSouth mentions inspection, testing, installation, and maintenance associated with regulated investment such as analog network channel terminating equipment, subscriber pair gain, and enhanced 911 Service. *Id.* at 4-5.

[16] GTOC refers to its "Nonregulated Activities Accounting Guidelines," or "NAAGs". GTOC Direct Case at 4.

[17] GTOC mentions network terminating wire, network channel terminating equipment, certain customer premises equipment, and subscriber pair gain equipment.

[18] Nevada Bell estimates that implementation of that manual would cause a small shift from its nonregulated to its regulated operations, increasing interstate access revenue requirement by 0.4 percent. Nevada Bell Direct Case at 3. Nevada Bell's Exhibit 1 contains its response to the Audits Branch data request.

[19] New England explains that in its network, the local loop and drop wire are components of cable and wire facilities. The drop wire terminates in a protector on the customer's premises, and inside wire begins on the customer side of the protector. New England Direct Case at 35. New England states that the regulated network terminating wire is the portion of the wire extending from the protector to the demarcation point (network interface). Nonregulated inside wire is the wire from the demarcation point to the jacks. New England admits that in multifamily dwellings and office buildings, this regulated network terminating wire can be extensive.

[20] US West asserts that C&WF Category 1.3 is excluded from the new allocation base, resulting in a reduced GSF assignment to the Base Factor portion of common line. This results in a significant increase in assignment of GSF investment to other access categories, including the wiring component of Common Line. US West Direct Case at 5.

[21] AT&T argues that while only Ameritech and the NYNEX companies use this term, the others appear to follow the same practice. AT&T Comments at 8 n.**.

[22] With one exception, each LEC that filed a direct case on this issue also responded, in rebuttal, to AT&T's arguments. Nevada Bell, while it did file a rebuttal, did not discuss inside wiring.

[23] Ameritech Rebuttal at 2; Bell Atlantic Rebuttal at Appendix A-1; BellSouth Rebuttal at 6; GTOC Rebuttal at 3; NYNEX Rebuttal at 5; Pacific Bell Rebuttal at 2; SWB Rebuttal at 3-5; US West Rebuttal at 4-6.

[24] BellSouth states that it has treated as regulated the facilities up to and including the network interface, whether the network interface is located at the protector or inside the premises. BellSouth Rebuttal at 8.

[25] Ameritech includes the definition, from the *Detariffing Order*, of network interface or demarcation, with this Commission's stipulation that this shall be located on the subscriber's side of the telephone company's protector. Ameritech Rebuttal at 2.

[26] NYNEX quotes AT&T's reply comments in CC Docket No. 88-57. AT&T argued that "the telephone company should retain responsibility for the terminating wire, however long, between the protector and the network interface device." NYNEX Rebuttal at 8-9 (citing AT&T Reply Comments in CC Docket No. 88-57, filed June 17, 1988, at 11).

[27] Ameritech also argues that AT&T's suggestion that this Commission deregulate the provision of network interface devices would more properly be raised in a petition for Rule Making, and should be rejected here. Ameritech Rebuttal at 3.

[28] GTOC supports this argument by quoting this Commission's Responsible Accounting Officer Letter Number 7, dated July 1, 1987. GTOC Rebuttal at 3.

[29] BellSouth contests AT&T's contention that no regulated amounts remain in the station expense accounts, and reiterates its direct case assertion that Account 6310, Information Origination/Termination, contains significant regulated expenses. BellSouth Rebuttal at 9.

[30] NYNEX argues that if this Commission had believed that the LECs should have assigned no installation and maintenance expenses for inside wire to regulated accounts, we would have disallowed all of the LECs' regulated inside wire expenses. NYNEX Rebuttal at 10.

[31] NWB explains that since this Commission deregulated inside wire beyond the demarcation point and established the procedure for amortizing Account 232, as well as ruling that the point of demarcation was to be established by each governing state commission, NWB has been actively petitioning state commissions to move the point of demarcation to include not only "simple" inside wire but also "riser cable." US West Rebuttal at 2-4.

[32] Plant-specific expense is reported in row 200 on Table COS-2 (P) 32 of the 1988 TRP. Common Line inside wire is reported in Column C of that table.

[33] Two major adjustments are required. The first involves reallocating the Account 6362 expense that Part 69 allocated to the Limited Pay Telephone and Special Access elements. The second is to remove from plant-specific expense network and general support expenses (Accounts 6110 and 6120) and the maintenance expense associated with other 6300 series accounts other than Account 6362.

[34] In many office and apartment buildings, for example, the carrier has established a demarcation point at the individual office or residence. Extensive inside wiring therefore remains in the regulated accounts.

[35] The carriers supplied data for the first four months of 1988 in response to Bureau data requests dated June 23, 1988, and August 30, 1988.

[36] The carriers submitted data on work reports in response to the Bureau's June 23, 1988, data request.

[37] To confirm the results of our analysis, we conducted audits for four study areas: Wisconsin Bell; Southern Bell-Florida; New York Telephone; and New England Telephone-Massachusetts. Each of the audits revealed that all NTF report costs were being assigned to the regulated operation.

[38] For example, a common reason for the inability to determine the source of trouble is that the LEC maintenance person cannot gain access to the customer's premises. In such cases, an increased probability exists that the cause of the trouble is the customer's inside wire or CPE, both of which are provided as nonregulated activities.

[39] We have attempted to define the threshold for disallowance in a manner that is consistent with the size of the account or category in question and the degree of precision of the forecast that we believe is reasonable. For regulated Account 6362 expense, we have determined that an overestimate of 5 percent represents a material difference. The attachments to this Order give data at the level of aggregation used by each LEC in its access tariff filing.

[40] The Account 6362 disallowance figures in Attachment B reflect the corporate overhead expenses associated with wiring installation and maintenance. To capture the overhead expenses associated with the disallowance of Account 6362 expense, we developed ratios of overhead to non-overhead expense using the LECs' forecasts for total company expenses. This Attachment shows the result of applying the Account 6362 expense disallowance to an overhead expense factor based upon our ratio analysis. Our analysis was based on the ratio of corporate and customer operations marketing expenses (rows 220 and 250) to plant-specific, plant-nonspecific (excluding depreciation), and customer operations services (rows 200, 210, and 230). All row references refer to Table COS-1 (P) 32 of the 1988 TRP.

[41] Local switching equipment is currently included in Accounts 2210, 2211, 2212, and 2215. It comprises all central office switching equipment not assigned to other categories. Examples of local switching equipment are basic switching train, toll connecting trunk equipment, interlocal trunks, tandem trunks, terminating senders used for toll completion, toll completing train, call reverting equipment, weather and time-of-day service equipment, and switching equipment at electronic analog or digital remote line locations. 47 C.F.R. § 36.125(a).

[42] The segregation between NTS and TS costs was accomplished in each local dial office by the application of an equipment factor based on: (1) the particular type of equipment installed in the office, such as step-by-step, crossbar, electronic analog, or digital; and (2) the size of the office. *See* former Section 67.138(b)(1) of the Commission's rules. A greater portion of the investment in digital switches was treated as NTS.

[43] From 1971 to 1982, SPF was developed by applying specified factors to annual average interstate subscriber line usage (SLU). SLU is the annual average interstate subscriber line use, and represents the interstate use of the subscriber plant as measured by the ratio of interstate holding time minutes of use to total holding time minutes of use applicable to traffic originating and terminating in the study area. The development of SLU is set forth in 47 C.F.R. § 36.154(e)(1). A 1981 frozen SPF was used to allocate the NTS portion of the former COE Category 6 from 1982 to 1987.

[44] DEM represents the minutes of holding time of the originating and terminating local switching equipment. 47 C.F.R. § 36.125(b). The toll DEM applicable to each office was weighted on the basis of a toll weighting factor (TWF) appropriate for the particular type of equipment installed in the office. TWFs were intended to reflect the difference in the average cost per toll minute of use as compared to the average cost per exchange minute of use. *See* former Section 67.138(c)(1) of the Commision's rules.

[45] This Commission eliminated TWFs and also required that carriers with 50,000 or fewer access lines weight the DEM factor. *See* 47 C.F.R. § 36.125(f).

[46] For a complete background on the separations procedures applicable to local switching equipment, *see* Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, 2 FCC Rcd 2551, 2551-53 (1987) (*COE Recommended Decision and Order*).

[47] During the transition, the interstate allocation factor for the new COE Category 3 is computed by adding ("A" x the composite allocation factor) and ("B" x the DEM allocation factor). The "A" component is 0.9 in 1988, the first year of the transition, 0.7 in the second year, 0.5 in the third year, 0.3 in the fourth year, and 0.1 in the fifth year. The "B" component is 0.1 in 1988, 0.3 in the second year, 0.5 in the third year, 0.7 in the fourth year, and 0.9 in the fifth year. 47 C.F.R. § 36.125(c), (d) and (e). *See also COE Recommended Decision and Order*, 2 FCC Rcd at 2561. The full DEM allocation factor will be used in subsequent years. 47 C.F.R. § 36.125(b).

[48] Moreover, the separations procedures applicable to COE Category 3 are under further consideration by the Docket 80-286 Joint Board. *See* Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, 2 FCC Rcd 3787 (1987).

[49] That Order directed the BOCs, Centel, Contel, Cincinnati, GTOC, Rochester, SNET, and United to provide this information.

[50] Bell Atlantic states that its interstate allocation for 1988 is $930 million (19.5 percent), as compared to $875 million (20.34 percent) for 1987. Bell Atlantic Direct Case at 4. Bell Atlantic includes as Exhibit B-1 its completed forms from Attachment A from the *Phase II Designation Order*.

[51] The relevant figures for Centel are as follows: for Centel-Florida, 1987 COE Category 3 investment was $90.74 million (31.4 percent interstate); 1988 is $103.08 million (28.2 percent interstate). For Centel-Nevada, 1987 COE Category 3 investment was $119.22 million (49.1 percent interstate); 1988 is $141 million (46.5 percent interstate). Centel Direct Case at 3, referencing Exhibit A.

[52] Contel notes that its interstate percentage for 1988 is lower than that for 1986. Contel Direct Case at 5.

[53] Pacific Bell's 1987 figure for interstate investment in former COE Categories 4, 5, 6, and 7 is $584.96 million, while its 1988 figure for COE Category 3 is $1,575.19 million, although the percentage of investment decreases from 15.8 to 14.9 *Id.*

[54] SNET's figures are $150.195 million (26.53 percent interstate) for 1987, and $167.207 million (24.33 percent interstate) for 1988. SNET Direct Case at 6.

[55] Southwestern Bell provides figures for Arkansas, Kansas, Missouri, Oklahoma, and Texas showing decreases of 2.0 percent, 0.8 percent, 0.6 percent, 1.0 percent, and 0.5 percent, respectively. SWB Direct Case at 7.

[56] New England notes that it has increased modernization expenditures in 1988 due to accelerated switch replacements, primarily to meet equal access commitments. New England Direct Case at 7. It includes details of its construction program in Subsection 1.5 of Volume 2-1. New England concludes that the variation is due to the application of lower separations factors to higher study area investments. *Id.* at 7. SNET notes that it is pursuing a digital modernization program to replace electro-mechanical switching facilities, which accounts for the increases in investment. SNET Direct Case at 6-7. Southwestern Bell agrees, and provides a hypothetical accounting of how a $100,000 shift toward NTS investment produces an increase in the interstate allocation. GTOC argues that, for GTE-Florida, the comparison of 1987 results with 1988 Part 32 and Part 36 results is not legitimate, because of the significant plant balance changes by account between 1987 and 1988, on a Part 31 basis, due to growth and the company's central office modernization program. GTOC Direct Case at 43-44. *See also*, Centel Direct Case at 3.

[57] Cincinnati attaches as Subsection 2.6 of its direct case Attachment A from the *Phase II Designation Order*, and states that this attachment displays its historical interstate amounts for 1986 and 1987, as well as its prospective 1988 Part 32 and Part 36 COE Category 3 interstate amount.

[58] Cincinnati's 1987 interstate figure was $32.27 million and its figure for 1988 is $38.68 million, but it asserts a decrease in the absolute as well as the proportional amount due to the rules changes; when Cincinnati computed its 1988 figure according to the old COE categorization, it arrived at a figure of $39.7 million. Cincinnati Direct Case at Figure 2-1.

[59] United's 1987 interstate allocation for the former COE Categories 4, 5, 6, and 7 figure is $140.36 million; its 1988 interstate Category 3 figure is $114.99 million. United Direct Case, Attachment A at 1.

[60] Bell Atlantic explains that the composite percentage allocation from old COE Categories 4 through 7 is only one component of the transitional allocation factor for COE Category 3, and that the composite is reduced to zero at the end of five years. Bell Atlantic Direct Case at 3. Further, Bell Atlantic states, increasing interstate usage of local switching plant over

the 1984 to 1988 period will tend to increase the interstate allocation, and the amount of NTS central office equipment has increased faster than the TS category due to the growth in digital offices. *Id.* at 3. In addition, according to Centel, cost studies have changed significantly over the relevant period. Centel Direct Case at 4.

[61] BellSouth states that this Commission's comparison of results under the two allocation factors is inconclusive because we are comparing data from two different time periods. BellSouth Direct Case at 6-7. BellSouth contends that use of the new allocation factor sends a lower proportion of costs (if not lower actual costs) to the interstate jurisdiction than the composite allocation factor for all of the BellSouth study areas. *Id.*

[62] GTOC shows increases for Minnesota, Montana, Nebraska, and Tennessee, but avers that a comparison of the December 1987 actual interstate percentage to the 1988 percentage with the "B" component weighting removed shows a decrease for each. GTOC Direct Case at 7-8.

[63] BellSouth notes various factors that have contributed to faster-than-expected growth in both traffic sensitive and non-traffic sensitive central office equipment. BellSouth Direct Case at 8-9.

[64] The proportion of Category 6 NTS increased from 55 percent in December 1986 to 65 percent in December 1987. Rochester Direct Case at 3.

[65] Rochester's actual 1987 interstate assignment of the former COE Categories 4, 5, 6, and 7 was 18.64 percent, while the corresponding figure for the first quarter of 1988 is 17.93 percent. Rochester attaches Schedule I-A, which completes Attachment A of the *Phase II Designation Order*.

[66] New York asserts that the study increased the interstate allocation of the former COE Category 6 costs because it increased the portion of that investment that is NTS. New York Direct Case at 8. Further, New York says, because COE Category 6 (Local Dial Switching Equipment) comprises 97 percent of the combined former COE Categories 4, 5, 6, and 7, any change in that allocation has an overwhelming impact on the composite allocation factor, which at this time constitutes 90 percent of the "transitional" allocation factor. *Id.*

[67] New York is replacing its old switching equipment with new digital offices, it states, in a program driven by its need to meet its forecasted line requirements as well as by its equal access commitments. *Id.* at 10-11 & Exhibit II.1.

[68] MCI states that the LECs have overprojected COE Category 3 growth far in excess of historical growth, and far in excess of what can be justified by equal access switch conversions. MCI Opposition at 2. MCI asserts that this overstatement in investment causes the COE Category 3 increases despite the decrease in the interstate allocation factor.

[69] AT&T charges that BellSouth's Exhibit 2 is unpersuasive because BellSouth has not demonstrated how it derived its composite allocation factors used to assign COE Category 3 to the interstate jurisdiction. AT&T Comments at 37.

[70] BellSouth states without clarification, that although fewer lines are being converted to equal access, the per-line cost of conversions is expected to exceed costs incurred in earlier conversions. BellSouth Rebuttal at 15.

[71] We also note that our initial computations, which indicated increases in COE Category 3 interstate assignments for 1988 compared to 1987, were premised on a comparison of the allocations for different time periods. For 1987, carriers reported annual average interstate allocations. For the composite allocation factor, however, the carriers use end-of-period balances. As some LECs state, the comparison of these two periods can be misleading. The revised data filed by many LECs in *ex parte* submissions reflect end-of-period balances.

[72] AT&T argues that BellSouth's 1987 composite allocation factor was lower than its 1988 composite factor. In response to AT&T's arguments, BellSouth submitted revised COE Category 3 costs in its rebuttal. We reviewed BellSouth's data submitted in support of its 1988 tariff filing, including the corrected data submitted in its rebuttal, and conclude that its corrected data adequately support its COE Category 3 cost. *See* BellSouth Rebuttal at Exhibit D.

[73] We have determined, based on the amount of investment in COE Category 3 and the precision of the allocation rules that apply to this category, that excess investment over $1 million represents a material amount for the purposes of this computation.

[74] In cases in which we determined that the carriers' reported interstate investment exceeded our computations by over $1 million, we requested that the carriers verify their December 31, 1987, total gross investment for former COE Categories 4, 5, 6, and 7. These LECs filed revised data in *ex parte* submissions.

[75] Columns A and B show data derived from NET's responses to Attachment A of the *Phase II Designation Order*.

[76] We computed Column C by adding (0.9 of the ratio of interstate to total company investment as of December 31, 1987, times the composite allocation factor) to (0.1 times the DEM allocation factor). We obtained data for the computation of the December 31, 1987, composite allocation factor from NET's *ex parte* statement. We took data for the DEM allocation factor from NET's response to Attachment A of the *Phase II Designation Order*.

[77] We have used the same procedure to calculate revenue requirement disallowances in subsequent sections of this Order.

[78] The data used in calculating the revenue requirement factor are taken from the 1988 TRP, table COS-1 (P) 32, column "Total ROR Regulated IS Access." Plant-specific expense is reported on row 200. Total plant in service is reported on row 690.

[79] Total depreciation and amortization expense is reported on row 320.

[80] Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Companies, CC Docket No. 84-800, Phase III, FCC 86-354, released August 25, 1986, *recon. denied*, 2 FCC Rcd 5636 (1987). The rate of return prescription was extended in Refinement of Procedures and Methodologies for Represcribing Interstate Rates of Return for AT&T Communications and Local Exchange Carriers, CC Docket No. 87-463, 3 FCC Rcd. 1697 (1988).

[81] Approximately 70 percent of the 12 percent prescribed rate of return for LECs is taxable. (The interest on the LECs' debt is considered a business expense for tax purposes.) The 70 percent was derived from an analysis of the weighted average cost of capital formula that was adopted in the above-cited rate of return proceeding. In that proceeding the cost of debt was found to be 8.8 percent and the cost of equity was 14.2 percent. The capital structure was determined to be 59 percent equity capital and 41 percent debt. The weighted average cost of capital formula is: cost of capital = (debt cost x debt) + (equity cost x equity); or 0.12 = (0.088 x 0.41) + (0.142 x 0.59). Carrying out the multiplications reduces the formula to 0.12 = 0.036 + 0.084. The equity component of the formula is 0.084/0.12, or 70 percent of the 0.12 allowed return, with debt making up the remaining 0.036/0.12, or 30 percent.

[82] The prescribed rate of return is an after-tax return. The formula relating taxes (T) and the after-tax rate of return (R) can be written as T= 0.34 x (0.70 R + T), or T= .36 R. That is, if the after-tax return on investment that is allowed is $10, then the carrier must collect $10 + (0.36 x $10) = $13.6 in revenues to have $10 in earnings after taxes. If the after-tax rate of return is 0.12, then the before-tax rate of return must be 0.12 + (0.36 x 0.12) = 0.163.

[83] Total plant in service is reported on row 690. Accumulated depreciation reserve is reported on row 800. Accumulated deferred operating income taxes is reported on row 820. We performed an analysis of the accumulated deferred operating income taxes and determined that approximately 95 percent of the deferred taxes were attributable to investment. To exclude the non-investment related tax deferrals, we multiplied the accumulated deferred tax by .95.

[84] Circuit equipment is currently included in Accounts 2230, 2231, and 2232. Examples of circuit equipment include: telephone and telegraph terminals, repeaters, echo suppressors, radio central office equipment (except message switching equipment), composite ringers, line signaling and switching pad circuits, composite sets, repeating coils, program transmission amplifiers, testboards, test desks, repair desks, and patch bays. 47 C.F.R. § 36.126(a).

[85] *See* former Section 67.140 of the Commission's rules.

[86] For an explanation of basic and special circuit equipment, *see COE Recommended Decision and Order*, 2 FCC Rcd at 2552 and 2578, n.12.

[87] COE Category 4.23 consists of all interexchange circuit equipment except that furnished to another company for interstate use (COE Category 4.21) and wideband interexchange circuit equipment (COE Category 4.22). 47 C.F.R. § 36.126(b)(2). For a complete background on circuit equipment, *see COE Recommended Decision and Order*, 2 FCC Rcd at 2552, and Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, 2 FCC Rcd 6333 (1987) (*Further Order Inviting Comments*).

[88] Pursuant to the Part 36 Separations Manual, LECs determine an average interexchange circuit equipment cost per equivalent interexchange telephone termination for all circuits and apply this average cost to the equivalent interexchange termination counts for the four subcategories of circuits. 47 C.F.R. § 36.126(e)(3)(i).

[89] *COE Recommended Decision and Order*, 2 FCC Rcd at 2557, Table D.

[90] *Id.* at 2566.

[91] Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72, 80-286, and 86-297, 2 FCC Rcd 2639, 2642 (*Separations Report and Order), recon. granted in part*, 2 FCC Rcd 5349 (1987), *recon. granted in part*, FCC 88-216, released Aug. 8, 1988 (*Separations Reconsideration Order).*

[92] On September 9, 1988, BellSouth petitioned for a waiver to allow it to file tariff revisions implementing this change in the COE Category 4.23 separations procedures to become effective April 1, 1989, to coincide with the recent change in the annual access tariff filing dates. The Bureau granted the waiver request for all LECs. *See* BellSouth Petition for Waiver, Memorandum Opinion and Order, DA 88-1687, released Oct. 24, 1988.

[93] Although we are not deciding the question in this Order, we note that Shared Network Facility Agreement investment may be regulated investment for purposes of jursidictional separations.

[94] Ameritech notes that it separated and assigned directly those costs associated with wideband circuit equipment. Costs associated with host-remote circuit equipment were assigned to COE Category 4.3. Ameritech Direct Case at 5.

[95] Bell Atlantic developed termination counts for allocating COE Category 4.23 investment the same way it developed counts for assigning this investment to switched services and private line. It says these termination counts produce interstate special access allocations that are reasonably consistent with Part 67 allocations. Bell Atlantic Direct Case at Exhibit C-4.

[96] Bell Atlantic defines circuit equipment investment as belonging in COE Category 4.23 if it is used in connection with an interexchange circuit. Bell Atlantic states that in a large exchange area, relatively little circuit equipment will fall into COE Category 4.23, since most interoffice facilities will be COE Category 4.13 plant, connecting wire centers within the large exchange area. *Id.* at C-5. Bell Atlantic also notes that, for purposes of separations, intermediate points on a circuit constitute terminations. *Id.* As noted earlier, we have changed this rule. *See* para. 56, *supra*.

[97] BellSouth used historical characteristics of circuit investment applied to forecasted circuit investment to establish prospective categorized amounts. BellSouth Direct Case at 10-11.

[98] Cincinnati developed the CM distribution by jurisdiction based on message volumes and average minutes of conversation per message. Cincinnati Direct Case at 2-6.

[99] GTOC notes that some of its companies develop and apply the percent COE Category 4.23 on a study area basis rather than on a location basis. GTOC Direct Case at 10.

[100] Nevada Bell explains that it developed termination counts for the 1988 prospective year by counting actual terminations for a representative historic test period and adjusting the count to reflect forecast demand changes. Nevada Bell made this adjustment on the basis of the relationship between termination counts used for billing and those used for separations allocations, it states. Nevada Bell Direct Case at 6.

[101] NYT states that to produce the total unseparated regulated COE Category 4, it subtracts wideband investment from total COE Category 4 investment; it excludes equal access circuit equipment and non-regulated investment and contract investment, and includes common equipment associated with circuit equipment. It multiplies the result by its Basic Study factor. NYT also explains the derivation of the Basic Study factor. NYT Direct Case at 12-13.

[102] NYT states that it counts circuits with terminating circuit equipment (not digital switches) at both intermediate and end points, but excludes high-level multiplexing equipment, line haul repeaters, and other miscellaneous equipment. *Id.* at 15. These costs are included in the average book cost per termination, however.

[103] NYT offers a full explanation of the projection of these terminations counts. *Id.* at 16-17 & Exhibits III.2, III.3, III.4.

[104] Pacific Bell explains that it categorizes the total operations COE budget amount subject to separations by multiplying the budget amount by a factor that reflects the historical relationship of Part 67 COE Category 8.23 to total COE. Pacific Bell Direct Case at 8. It then divides its budgeted COE Category 4.23 investment by its total number of interexchange circuit terminations to calculate an average book cost per termination, counting as a termination each end of a circuit at which circuit equipment is present. *Id.* (Pacific Bell states that it does not separately identify end and intermediate terminations). Third, Pacific Bell multiplies the average book cost per termination by the number of circuit terminations for each of the three types of service included in COE Category 4.23, directly assigns the

resulting amounts, and apportions the remainder to the interstate jurisdiction on the basis of interstate CM applicable to those facilities. *Id.* at 10.

[105] This allocation factor is developed by first obtaining the interexchange CMs from the STARS, then dividing this by the total intrastate plus interstate CMs on interexchange facilities.

[106] SWB describes the Trunk Integrated Record Keeping System (TIRKS) used to determine circuit terminations. SWB Direct Case at 14 & Exhibit C.

[107] SWB also contends that the projected COE Category 4.23 separation factors and the demand quantities used to compute special access rates are consistent. *Id.* at 14.

[108] Investment that cannot be directly assigned is allocated between private line and message services on the basis of an average cost per equivalent telephone termination applied to the equivalent circuit termination counts for MTS and private line circuits. United Direct Case at 6.

[109] This is multiplied by the projected terminations for each class of circuit to yield the interexchange investment for each class. US West Direct Case at 13.

[110] US West evaluates this shift by creating hypothetical 1988 data using the Part 67 rules, and finds the increases to be $26.5 million for Mountain, $7 million for Northwestern Bell, and $6.6 million for Pacific Northwest Bell for interstate private line, and $3.2 million, $10.1 million, and $28 million, respectively, for interstate joint message. *Id.* at 14-15.

[111] AT&T charges that these three LECs appear to have excluded minutes of use associated with message circuits that were previously directly assigned to the interstate and state jurisdictions, but which are considered by these carriers to be jointly used message facilities in 1988. AT&T Comments at 30-31 & n.*, 32-33.

[112] Ad Hoc charges that NYT and NET, in failing to count message circuits terminating in a digital switch, have excluded selected terminations. Ad Hoc Opposition at 26-27 (citing NYT Direct Case at 16; NET Direct Case at 11).

[113] Ad Hoc charges that, because none of the BOCs provides intermediate circuit termination counts, the Commission and interested parties have no way of knowing how intermediate terminations are defined, and no way to determine how many of such points are included in the LECs' termination counts. *Id.* at 27-28.

[114] AT&T notes similar inconsistencies among the GTOC companies regarding projected message terminations. AT&T Comments at 34-35.

[115] AT&T notes that the *Phase II Designation Order*, at Attachment B, requires this information, but states that Ameritech and SWB have failed to provide it. AT&T Comments at 35.

[116] Ameritech explains that, because the Commission's data format did not allow for the entry of data in the message interstate or message intrastate columns, Ameritech entered the circuit terminations that normally would have fit into these classifications into the jointly used message circuit column. Ameritech Rebuttal at 10.

[117] Bell Atlantic argues that AT&T assumes that appropriate allocation factors for COE Category 4.23 investment can be derived from the relationship between joint message minutes and joint message circuit miles. Bell Atlantic states that the Commission has required that distance sensitivity be eliminated from the categorization and separation of Category 4.23 investment, however. Bell Atlantic Rebuttal at Appendix C-3. Bell Atlantic contends that AT&T's analysis is flawed even if such a relationship were found to exist. *Id.* GTOC concurs in this argument. GTOC Rebuttal at 9.

[118] Bell Atlantic affirms the reasonableness of its New Jersey estimate, and states that variations among the states are not significant anyway, in view of its regionwide rates. Bell Atlantic Rebuttal at C-5.

[119] NYT did not include such minutes, NYNEX reports; inclusion of these minutes would increase NYT's interstate CM factor from 0.5420 to 0.6892. NYNEX Rebuttal at 16.

[120] US West notes that this unannotated inclusion is probably the cause of Ad Hoc's charge that US West developed multiple unit cost of terminations. US West Rebuttal at 8-9.

[121] BellSouth notes that some terminations are excluded from such a count. These include terminations in line haul repeaters and similar miscellaneous equipment, terminations in non-BellSouth-owned equipment, and circuits that terminate in switching equipment. BellSouth Rebuttal at 18.

[122] GTOC also rejects AT&T's challenge to its "unexplained apparent inconsistencies" among the GTOC companies, stating that each has developed its rates based upon its circumstances and costs and that the companies should not be compared. GTOC Rebuttal at 11-12. Differences exist among the companies, GTOC explains, because of their operating characteristics and costs that result in differences in the number of terminations per loop. *Id.* at 13.

[123] NYNEX too discusses excluded equipment, and lists high level multiplexing equipment, line haul repeaters, and other miscellaneous equipment. NYNEX Rebuttal at 13-14. NYNEX does not count circuit terminations at the end of a message circuit terminating at a digital switch because the circuit equipment at such a switch is classified as either Category 2 tandem or Category 3 local switching equipment. *Id.* NYNEX disputes Ad Hoc's argument that this constitutes "arbitrary" exclusion of selected terminations from its termination counts. *Id.* (citing Ad Hoc Opposition at 26-27).

[124] SWB states that TIRKS is designed to count both types of termination together, and that SWB is temporarily unable to report them separately. SWB Rebuttal at 9.

[125] NYNEX argues that Ad Hoc's assertion that the LECs must use basic circuit equipment to multiplex and demultiplex DS-1 and DS-3 transmission equipment to individual voice bandwidth message lines to terminate circuits in COE Category 3 digital switching equipment is incorrect with regard to DS-1 service. NYNEX Rebuttal at 15 (citing Ad Hoc Opposition at 8-9, 27). NYNEX states that at a digital switch, the equipment that converts the DS-1 signal to analog voice signals is an integral part of the switch, and is categorized as COE Category 2 or 3 switching equipment. *Id.*

[126] Ameritech also emphasizes that Ad Hoc's challenge concerns only the small portion of Ameritech's surrogate methodology designed to separate out the Hi-Cap investment that Ameritech had erroneously included in COE Category 4.23. Ameritech Rebuttal at 13.

[127] Ad Hoc challenged Ameritech's use of this surrogate methodology, but Ameritech answers that the surrogate methodology properly considers changes in demand as well as additional multiplexing costs required by Hi-Cap service to effect increases in investment to COE Category 4.22 and to Cable and Wire Facilities (C&WF) Category 3. *Id.* at 14. Ameritech denies any contradiction in its methodologies, and states that the surrogate was used only to determine whether the adjustment of separations data for demand changes would have resulted in changes to revenue requirements included in its October 1987 filing. *Id.* at 15.

[128] Questions relating to the development of projected separations factors are discussed in Part VI.

[129] November 30, 1987, letter from GTOC to Michael Wilson, Chief, Audits Branch, Accounting and Audits Division, Common Carrier Bureau, FCC. GTOC also concedes in its direct case that intermediate terminations were not counted. GTOC Direct Case at 11.

[130] The single exception is SNET, which does not indicate whether intermediate terminations are included in the totals. The others state that intermediate terminations are included, as follows: Ameritech Direct Case at Attachment B, line 377; Bell Atlantic Direct Case at C-5; BellSouth Direct Case at 13; Cincinnati Bell Direct Case at Attachment B, Fig. 2-3; NYNEX Direct Case at 11, 13; PacTel Direct Case at 7; SWB Direct Case at 13; United Direct Case at 7; US West Direct Case at Description of Attachments.

[131] 3 FCC Rcd at 3103-04, at paras. 5-7, and Attachment B.

[132] SNET *Ex Parte* Statement submitted Aug. 29, 1988.

[133] *See Further Order Inviting Comments*.

[134] The 1987 CM data for all of these companies except NYNEX are contained in comments they filed on December 23, 1987, in CC Docket No. 80-286. *See* Bell Atlantic Comments at Appendix 1; GTOC Comments at Attachment 4; Pacific Bell and Nevada Bell Comments at Attachment A. The 1987 CM data for NYNEX are contained in its October 12, 1988, *ex parte* statement, which revises the 1987 CM data that it submitted on December 23, 1987, in CC Docket No. 80-286.

[135] Specifically, the Pacific Bell data show that 38 percent of total message costs were directly assigned, and that 97 percent of this directly assigned amount was attributed to state operations.

[136] Alternatively, such consistency would be reasonable if the portion of message costs attributed to interstate operations had been the same in 1987 for both the allocated costs and the directly assigned costs. But that, also, is not the case. While NET attributed 42 percent of the allocated message costs to interstate operations, it attributed only 35 percent of the directly assigned message costs to interstate operations during that same year.

[137] *See Conformance Recommended Decision and Order*. The Commission adopted the changes recommended by both Joint Boards in the *Separations Report and Order*.

[138] C&WF investment is recorded in Account 2410 and includes such types of communications plant in service as poles and antenna supporting structures, aerial cable, underground cable, buried cable, submarine cable, deep sea cable, intrabuilding network cable, aerial wire, and conduit systems. 47 C.F.R. § 36.151(a). For a complete background on C&WF, *see Further Order Inviting Comments*, 2 FCC Rcd at 6335. The Docket 80-286 Joint Board is currently conducting a further inquiry into the separations procedures applicable to C&WF. *Id.* at 6336-37.

[139] Pursuant to the Part 36 Separations Manual, the carriers determine an average interexchange C&WF cost per equivalent interexchange circuit mile for all circuits in C&WF Category 3, and apply this average cost to the equivalent interexchange circuit mileage counts of each of the classes of circuits, *e.g.*, toll message circuits and TWX circuits. 47 C.F.R. § 36.156.

[140] The cost of C&WF Category 4 used for WATS closed end access is directly assigned to the appropriate jurisdiction. 47 C.F.R. § 36.157.

[141] The significant difference, Bell Atlantic states, is in the categorization of wideband exchange line plant. Bell Atlantic Direct Case at D-2.

[142] Joint message investment is apportioned between the jurisdictions using CMM, pursuant to Section 36.156 of the Commission's Rules, Cincinnati states. Cincinnati Direct Case at 2-10, citing Fig. 2-11.

[143] GTOC concedes that it inadvertently assigned wideband interexchange costs to C&WF Category 3 rather than C&WF Category 2, but states that this had no impact on revenue requirements. GTOC Direct Case at 13.

[144] GTOC outlines the cost development process step by step, from the C&WF basic study to the calculation of a study area total cost figure. *Id.* at 13-15.

[145] GTOC states that since the starting point of its loop count methodology is billed demand units, the resulting estimates are consistent with forecasted demand units. *Id.* at 16-17.

[146] Both note that NYT's direct case concedes that its C&WF revenue requirement should be $381 million, rather than the $425 million NYT included in its October 1987 filing. AT&T Comments at 17; MCI Opposition at 17 (citing NYT Direct Case at 39). But NYT includes a different figure -- $390 million -- in its calculations, AT&T avers. AT&T therefore states that NYT should be directed to reduce its revenue requirement by $9 million. *Id. See* Section XI, *infra*.

[147] AT&T states that Bell Atlantic's direct case establishes C&WF Category 1.2 interstate investment for New Jersey at $67.4 million, but uses the figure $69.67 million in a Jan. 25, 1988, special access tariff filing. *Id.* at 17-18 (citing Bell Atlantic Direct Case at Ex. D-2, NJ, at 3; and Jan. 25, 1988, Access Filing, D&J at 3-2). AT&T states that Bell Atlantic's revenue requirement should therefore be reduced by $834,000.

[148] Ad Hoc states that NET also includes wideband and nonwideband loop counts in a single attachment in its direct case, despite its claim that it has removed wideband service loops from the value in question. Ad Hoc Opposition at 53 (citing NET Direct Case at 18 and *id.* at Att. C, p. 4).

[149] Ad Hoc asserts that the use of these factors is inconsistent with Part 36 of the Commission's rules. *Id.* at 54.

[150] BellSouth *Ex Parte* Statement filed July 6, 1988; NYNEX *Ex Parte* Statement filed Aug. 26, 1988; US West *Ex Parte* Statement filed Aug. 29, 1988.

[151] Ameritech *Ex Parte* Statement filed Aug. 29, 1988; Bell Atlantic *Ex Parte* Statement filed Aug. 25, 1988; GTOC *Ex Parte* Statement filed Aug. 25, 1988; NYNEX *Ex Parte* Statement filed Aug. 26, 1988; United *Ex Parte* Statement filed Aug. 25, 1988.

[152] Ameritech states that, even after the misclassification error is removed from the submitted Illinois data, the distribution of C&WF Category 1 investment among service classes still does not precisely reflect the distribution of loops among those classes. According to Ameritech, this remaining discrepancy in the Illinois study area is due to a $9.6 million reduction in this investment resulting from CC Docket 88-1, Phase I. Ameritech explains that this reduction was obtained through a surrogate methodology that did not change the distribution of loops.

[153] Ameritech *Ex Parte* Statement filed Sept. 30, 1988.

[154] Ameritech projected a total investment of $256.4 million for interstate special access loops, and recorded $221.4 million for the first six months of 1988.

[155] Specifically, the new Part 36 separations procedures applicable to the C&WF Category 2 investment in exchange trunks and C&WF Category 1 investment in exchange lines differ from the previous Part 67 procedures applicable to the investment in Outside Plant Category 1.2, Exchange Trunk, and Outside Plant Category 1.3, Subscriber Line Excluding Wideband.

[156] It is unclear from Ameritech's filing whether these actual end-of-quarter data are annualized.

[157] Contel of Texas does not provide a significant number of Hi-Cap services.

[158] Others comment that no one has challenged their VG special access demand forecasts. *See, e.g.*, Ameritech Rebuttal at 18.

[159] Contel also notes that Contel-California and Contel-Texas have recently experienced declines in VG demand, and states that it modified its demand forecasts for these study areas. Contel Phase II Rebuttal at 6 (citing its Transmittal No. 87, filed July 15, 1988).

[160] Centel also submits the data AT&T requested, however, as an Exhibit attached to its rebuttal. Further, Centel notes its May 17, 1988, Transmittal No. 82 correcting demand forecasts for Centel-Florida. Centel Rebuttal at 3-4.

[161] NYNEX charges that AT&T has ignored this revised demand forecast, basing its objection instead on the forecast originally submitted in October. NYNEX Rebuttal at 24.

[162] Pacific Bell also charges AT&T with miscalculations. Pacific Bell Rebuttal at 9-10. Pacific Bell states that discrepancies within its demand data fall well within acceptable forecast error rates, especially for a dynamic service such as Hi-Cap, and that it sees no necessity to restate or modify its 1988 forecast. *Id.* at 11.

[163] Ameritech states that its revised forecasts show that its October 1987 Hi-Cap forecasts were overstated for Illinois and Indiana Bell, understated for Michigan and Wisconsin Bell, and accurate for Ohio Bell. Ameritech explains that it develops the revenue requirement for special access as a whole, not separately for Hi-Cap services. Ameritech Rebuttal at 20. For both Michigan and Wisconsin, Ameritech states, the revised demand data resulted in lower annualized revenue than that expected from the October filed demand, so it has not requested rate decreases. *Id.*

[164] BellSouth also argues that any overrun of DS1 revenues is more than offset by revenue shortfalls for VG and DS3. BellSouth Rebuttal at 20-21.

[165] These data were required from the regional BOCs, GTOC, Centel, Cincinnati, Contel, SNET, Rochester, and United. 3 FCC Rcd at 3104.

[166] Ameritech contends that although forecasted demand included reductions in voice grade (VG) demand, overall demand for special access services was actually increasing. Since per-loop cost is greater for than for high capacity (Hi-CapVG, adjustments of historical factors to reflect prospective demand would have put upward pressure on special access investment and rates. Ameritech Direct Case at 6.

[167] BellSouth states that loop and channel termination counts differ due to network configurations where loops are defined differently than CTs. BellSouth Direct Case at 17. To assure consistency, the growth rate in CTs is used to develop forecasted loops. BellSouth Direct Case at 17. The resulting data comprise Exhibit 6 in BellSouth's Direct Case.

[168] NET also describes methodologies, including direct identification and direct assignment, that it uses to reflect Hi-Cap channels in cost assignments. NET Phase II Direct Case at 28-31.

[169] Ad Hoc states that NET also includes wideband and nonwideband loop counts in a single attachment in its direct case, despite its claim that it has removed wideband service loops from the value in question. Ad Hoc Opposition at 53 (citing NET Direct Case at 18 and *id.* at Att. C, p. 4).

[170] SNET includes as Attachment E to its Phase II direct case the relevant section of its Phase I direct case. SNET notes that its composite interstate special access circuit termination count was adjusted downward by approximately 2.6 percent in line with its projected decline in special access demand. SNET Phase II Direct Case at 9.

[171] Some separations factors are based on loops, which connect end users to their serving wire centers. One loop is counted for each circuit connection to the end user. Loops are not equivalent to channel terminations (CTs), the measure used in ratemaking. The CT is counted at each end of a dedicated facility that connects the end user to an interexchange carrier's point of presence (POP). Further, separations procedures allocate investment based on route miles associated with physical plant, while ratemaking demand counts airline miles for both interexchange and exchange plant between the end user serving wire center and the interexchange carrier POP serving wire center.

[172] SWB notes that ratemaking demand for joint message circuits would take into consideration interstate and intrastate minutes of use, while separation allocation factors would be based upon route mileage, circuit terminations, and loops utilized in the provision of joint message services, thus making reconciliation in this category impossible. SWB Phase I Direct Case at 8.

[173] PNB cites the *Demand Reconciliation Study Order* to support its assertion that this Commission recognizes that mismatches exist between demand used to determine special access revenue requirements and demand used to calculate special access rates. PNB Phase I Direct Case at 8 (citing 2 FCC Rcd 3236, 3237).

[174] Ameritech addresses this issue by calculating adjustments by use of a surrogate based on differences between forecasted and historical demand, rather than by use of revised separation factors. Ameritech argues that this procedure achieves a direct relationship between special access demand and cost. Ameritech Phase I Rebuttal at 13. Ameritech states that although the surrogate method does not literally reduce the number of loops to arrive at lower investment levels, the end result is the same as if the loops had first been adjusted and processed through revenue requirement models. Ameritech Phase I Direct Case at 11.

[175] Bell Atlantic also contends that it need not provide detailed reconciliation arguments, since that issue will be resolved in a separate inquiry, the demand reconciliation study proceeding. Bell Atlantic states that the requirement here is to show that the data are not inconsistent, and argues that it has done so. Bell Atlantic Phase I Rebuttal at 2-3.

[176] GTOC states that the factors in California and Florida move counter to the change in demand because in both instances the interstate loops increased. Since the factor is calculated as the ratio of the number of special access loops to the total interstate loops, GTOC explains, the increase in the total interstate loops exceeds the increase in special access loops. GTOC Phase I Rebuttal at 4.

[177] GTOC's counts of circuit miles and terminations are extended into the prospective period using historical data for circuit miles. The historical data are adjusted to reflect future conditions, incorporating new routes, changes in plant, technological developments, POP migration, and other factors. The results are further adjusted to reflect marketing programs and economic trends, and are reviewed for consistency with trends used to project airline miles and loops. In some cases, demand (airline) miles are converted to equivalent circuit miles. *Id.* at 11-12.

[178] BellSouth asserts that an increase or decrease in special access demand may not produce a comparable change in the interexchange termination count, and that changes such as network rearrangements or modernization might overshadow changes due to demand. BellSouth Direct Case at 13-14.

[179] United asserts that circuit miles and channel miles are the most logical factors for attempting to establish consistency between cost projections and demand forecasts for COE Category 4.23, but warns that comparisons may seem anomalous. United gives an example based on POP migration. United Phase II Direct Case at 8-9.

[180] US West developed a CT-to-loops conversion ratio for each basic service type, computed the counts of equivalent loops for each class of service, then used November 1987 separations data to develop a ratio of book cost per wideband loop to book cost per non-wideband loop (in order to convert wideband CTs to equivalent analog loops). US West details its method of correlating forecast CTs to equivalent loop counts. Finally, US West states that, following its recalculation of special access revenue requirement and filing of revised rates, the same data source is now being used for both separations and billing purposes, so that there is a complete match between the loop used for revenue requirement development and that used for ratemaking. US West Phase II Direct Case at 21-22.

[181] Ad Hoc includes Ameritech and Bell Atlantic, and suggests that US West, NET, NYT, and BellSouth might be included, in its list of carriers that should be required to file new direct cases.

[182] Ad Hoc challenges the BOCs' showing of substantial declines in special access demand and absolute increases in the amount of COE Category 4.23 costs. Ad Hoc Opposition at 20-21. The exceptions to this conflict-ridden showing, Ad Hoc asserts, are Pacific Bell and Southwestern Bell. *Id.* Ad Hoc states that, except for NET and Pacific Northwest Bell, the absolute increases in cost are also proportional increases. *Id.* at 22-23. Ad Hoc says that it is impossible to find the reasons for these dichotomous results from the direct cases. *Id.* at 23. Ad Hoc notes that, while LECs showing COE Category 4.23 cost increases argue that the change to Part 36 rules has provoked this rise, those carriers not showing such increases have found the opposite results upon applying Part 36. *Id.* at 25.

[183] MCI suggests that ratemaking demand should be translatable into separations demand by looking at the facilities used to provide service and tracing the facilities back to the separations demand counts. MCI Phase II Opposition at 21.

[184] Under the Automated Reporting Management Information System (ARMIS), certain Tier 1 LECs provide quarterly reports of data called for in USOA, separations, and access charge parts of the Commission's rules. The ARMIS reports do not provide actual COE Category 4.23 investment. We have compared projected and actual investment for a broader category that is described as "COE - Transmission Equipment" in ARMIS reports in order to identify LECs that significantly overestimated investment in the larger category.

[185] For C&WF, the analysis consists of multiplying an estimate of a carrier's 1988 cost per loop (derived from actual 1987 figures and historical cost trends) by its forecasted interstate private line loops. For COE-transmission facilities, our analysis consists of multiplying an estimate of a carrier's 1988 cost per circuit termination by its forecasted interstate private circuit termination.

[186] In most cases, a study area is the relevant area. If LEC access tariffs are currently based upon a larger area, we aggregated study area data to determine the disallowance.

[187] Because actual data are available for a substantial portion of 1988, we have relied on actual data to confirm our computation of disallowances. In addition to attempting to delineate the procedure that the LECs should have used to reconcile cost and demand projections at the time these tariffs were filed, we have used actual data to produce a more precise disallowance. We are requiring a disallowance for those carriers that filed projected COE Category 4.23 Special Access investment and Special Access Cable and Wire Facilities investment that exceeded their actual investment in this plant by more than five percent. We have ordered only those corrections totaling $100,000 or more. Attachments C (for COE Category 4.23) and F (for C&WF) list the carriers and jurisdictions for which we find such adjustments to be necessary.

[188] Tax Reform Act, Pub. L. No. 99-514, 100 Stat. 2085 (Oct. 22, 1986).

[189] The TRA prescribes a method known as the Average Rate Assumption Method (ARAM), which distributes the return of this excess to income determinations in current and future years.

[190] *See, e.g.*, Nevada Bell Direct Case at 14.

[191] *See, e.g.*, BellSouth Direct Case Exhibit 10.

[192] *See, e.g.*, Cincinnati Bell Direct Case Exhibit 6-1.

[193] *See, e.g.*, GTOC Direct Case at 26 and Exhibit EDT-3 (five companies operating in 23 jurisdictions); Ameritech Direct Case at 18-19 (Illinois Bell, Indiana Bell, Michigan Bell, and Wisconsin Bell); Centel Direct Case at 9 (Centel (Florida) and Centel (Nevada)); Contel Direct Case at 5-6 (Contel's California, New York, Texas, and Virginia Companies); Lincoln Telephone Direct Case at 2.

[194] Public Notice, DA 88-1240, released Aug. 8, 1988 (August 8 Public Notice).

[195] Revenue requirements are affected by the flow back of excess deferred taxes in two ways. First, the flow back reduces federal income tax (FIT) expense, which reduces revenue requirements by $1.51 for every $1 of FIT expense reduction. Second, the rate base is increased by having fewer accumulated deferred tax amounts to deduct. This increases revenue requirement by 12 cents for every $1 of excess deferred income taxes flowed back. The primary focus of our analysis of excess deferred taxes has been directed toward the income statement presentation. Data submitted generally do not indicate that carriers have erred in calculating accumulated deferred tax balances.

[196] TRP instructions require that the excess deferred taxes be adjusted on line 400 (Cost Analysis Table Descriptions COS-APP page 8 of 36 Note 6). The flow back of excess deferred taxes does not have a dollar-for-dollar impact on revenue requirements. Line 400 of the TRP in essence adjusts the income figure to which a tax rate is applied. In order properly to reflect the impact on allowable taxes reported on line 500, it is first necessary to reduce the income to which the tax rate is applied.

[197] Instead of dividing the flow back amount by the current tax rate, MCI's illustration shows the GTOC methodology multiplying the flow back amount by the current tax rate -- which GTOC says it did not do. Multiplication produces a smaller reduction for the income base to which the current tax rate is applied under TRP instructions.

[198] MCI Opposition at 15-16. According to MCI, price adjustments should be made to reflect the fact that adjustments must be accomplished during the remaining months of the 1988 access year.

[199] Ameritech Response to August 8 Public Notice, Attachments. Dollar figures were developed by adding amounts shown on individual attachments (line 3) for Illinois Bell, Indiana Bell, Michigan Bell, and Wisconsin Bell.

[200] *Id.* Dollar figures were developed by adding amounts shown on individual attachments (line 5) for Illinois Bell, Indiana Bell, Michigan Bell, and Wisconsin Bell.

[201] Ameritech Application No. 53, Dec. 8, 1987, at 2.

[202] AT&T's comments reference Ameritech's Application No. 53 as the source for AT&T's recommendation of a $6.5 million revenue requirement reduction. AT&T's estimate differs from our own due to our adjustment of the excess deferred tax amount to show a revenue requirement reduction.

[203] The true revenue requirement impact should be reflected in the allowable income tax reported on line 500 of the TRP prospective filings. The TRP prospective filings, in essence, build the revenue requirements beginning with the net return. Theoretically, the net return line figure (line 590) added to the allowable tax line (line 500) and the total expenses and other taxes line (line 390) should equal net revenues (line 190) because every revenue dollar required to achieve the prescribed net return must be sufficient to cover the tax.

[204] If a company's net return is set at $100 and the tax rate is 34 percent, the revenue requirement to cover return and taxes would be $151.51. The taxes on $151.51 at current tax rates would be $51.51 ($151.51 x 0.34 = $51.51). Deducting the $51.51 from the revenue yields the desired $100 return ($151.51 - $51.51 = $100).

[205] Using the example in the preceding footnote, if $10 were no longer needed for taxes, the revenue required to recover taxes could be reduced by $15.15. The revenue requirement would then be $136.36 ($151.51 - $15.15). Applying the tax rate to the adjusted revenue figure would yield a tax of $46.36 ($136.36 x .34 = $46.36). Adjusting this figure for the $10 expense reduction yields a tax of $36.36 ($46.36 - $10 = $36.36). This figure can then be deducted from the adjusted revenue to achieve the $100 net return ($136.36 - $36.36 = $100).

[206] To achieve the correct result in the TRP prospective filings, the revenue requirement impact must be reflected in allowable income taxes (line 500), because the net return (line 590) and the total expenses and other taxes (line 390) are fixed numbers. In the TRP prospective filings this is accomplished by adjusting the excess deferred tax on the FIT adjustment line (line 400) in accordance with the TRP instruction This line, as a practical matter, is an income adjustment. The adjustment would be accomplished by dividing the excess deferred tax by the tax rate ($10 / 0.34 = $29.40).

[207] TRP Form COS-1 (P) 32, page 1.2 of 2 line 400 shows an interstate FIT Adjustment of $18.9 million, which is 27.9 percent of the total company figure. This is not in conflict with the interstate factors shown in BellSouth's response to the August 8 Public Notice.

[208] These included, but were not limited to, comparisons of prospective data with historical data on COS-1 (H).

[209] BellSouth has reduced taxes in Kentucky by $2,399,000 due to the flow back of excess deferred taxes. *See* BellSouth Response to August 8 Public Notice, Aug. 19, 1988. Also, when the revenue figure is adjusted upward to reflect the targeted return, the tax related to the revenue increase was not materially different than the increase in taxes projected.

[210] Cincinnati data filing, Aug. 24, 1988, Attachment A.

[211] *Id.* at Attachment B. This current view reflects Cincinnati's most recent estimate of its excess deferred tax situation based on actual results, while Attachment A reflects an adjustment to the TRP filing which was prepared based on its best estimates prior to October 1, 1987.

[212] This is the current view amount of $2,420,534 shown in the August 24 filing less the amount reported in Cincinnati Bell's original August 15, 1988, response to our August 8 Public Notice, which showed that the amount of the reduction in the TRP was $107,011.

[213] In its direct case filing, GTOC data showed an impact of $9.3 million. In its rebuttal GTOC makes repeated references to this figure, but includes in Attachment 3 to the response to the August 8 Public Notice a figure of $9.4 million. In subsequent discussion we will use the $9.4 million figure included in Attachment 3, since it is presumed to be the more recent and therefore more accurate figure.

[214] Several GTOC companies flowed through the excess deferred taxes. GTOC-California and GTOC of the Northwest flowed back excess deferred taxes having an impact of $7.4 million. GTOC Response to August 8 Public Notice, Attachment 1.

[215] This was noted by MCI; *see* MCI *Ex Parte* Statement filed Aug. 24, 1988.

[216] GTOC *Ex Parte* Statement filed Aug. 31, 1988.

[217] GTOC revenue requirement reductions total $18.1 million. However, we are not imposing disallowances if the correction for excess deferred taxes does is less than $100,000 for the study area. This reduces the revenue requirement impact for GTOC to $17.9 million, and excludes GTE-Minnesota, GTE-Nebraska, and GTE-Virginia.

[218] This interstate factor was derived by dividing COS-1 (P) 32 page 2.1 of 2 line 820 col. F by COS-1 (P) 32 page 2.1 of 2 line 820 col. A.

[219] *See* NYNEX Comments in CC Docket 80-286 at Attachment B, filed December 23, 1987.

[220] NYNEX *Ex Parte* Statement filed on October 11, 1988.

[221] In the current investigation, GTOC Florida's direct case is opposed by MCI and Microtel.

[222] GTOC Florida has not included the detailed explanation of GTOC separations processes that was included in the October 1987 filing.

[223] The Common Carrier Bureau subsequently denied the petition for a waiver of the Part 69 access charge rules to permit GTE Florida to implement its PSA offering. GTE Telephone Operating Companies, Memorandum Opinion and Order, 3 FCC Rcd 4674 (1988).

[224] AT&T also challenged the GTOC Florida filing, but only on the issue of inside wiring. That argument is discussed in Section I, *supra*.

[225] The Bureau's denial of GTOC's PSA waiver request moots the arguments arising on that issue. *See* note 224, *supra*. We note that a more complete initial showing by GTOC-Florida would and should have avoided this investigation.

[226] TV User Parties discuss, and seek to rely on, 1983 Ameritech investment data.

[227] TV User Parties state that insult -- the incorrect application of the closure factor to a single-service, single-jurisdictional service like video --is compounded by injury -- the 1988 increase of the factor from 1.05 to 1.40.

[228] Ameritech asserts that it is inappropriate to use old costs in unit cost studies, regardless of the configuration of the facilities used to provide service. Also, Ameritech notes, there have

been changes in costing methodologies since the 1983 costs were developed, including the combination of full- and part-time unit costs and the changed definition of the assignment of equipment to channel termination and channel mileage.

[229] Western Union motion for immediate establishment of an expedited procedural schedule for review of the Phase I direct case of New York Telephone, filed Feb. 12, 1988 (Western Union Motion).

[230] *But see* NYT Phase II Direct Case at 26. In Phase II, NYT indicates that it had 571,898 interstate private line loops in June 1987 and its loop-to-channel termination ratio at that time was 1.47. It based this ratio on data that showed a slightly increasing ratio from August 1986 to June 1987. NYT therefore states that, based on the data available to it at the time of the tariff filing, it conservatively estimated a ratio of 1.4577. NYT Phase II Direct Case at 26 and Exhibit IV.4.

[231] NYT asserts that this count must be adjusted to 500,630 loops to exclude certain loops and include others. NYT Phase II Direct Case at 29. Western Union claims, on the other hand, that this count must be adjusted to 467,914 to include certain loops and exclude others. Western Union Motion at 4, nn. 3 and 6 and Table.

[232] Moreover, as NYT also concedes, this estimate is conservative because it assumes that NYT will lose 1.28 loops for each reduction in channel terminations. *Id.*

[233] *See* note 254, *infra*.

[234] *See, e.g.*, Commission Requirements for Cost Support Material to be Filed with Access Tariffs, DA 88-1554, released Oct. 3, 1988 (*1989 TRP Order)* at para. 37; Commission Requirements for Cost Support Material to be Filed with Annual Access Tariffs, Mimeo No. 4219, released July 30, 1987 (*1988 TRP Order);* Commission Requirements for Cost Support Material to be Filed with Access Tariffs, Mimeo No. 6356, released Aug. 15, 1986 (*1987 TRP Order*).

[235] NYT made certain adjustments to its count to derive a loop count of 413,534. We added Hi-Cap loops to that count to derive a count of 418,244. *See* NYT Direct Case at Exhibit IV.6.

[236] This figure is based on the investment reported in NYT's Direct Case in Phase I at Exhibit 4.

[237] MCI does not relate this reduction to any of the adjustments discussed by Western Union in the Western Union Motion discussed above.

[238] MCI objects to NYT's proposal to "continue monitoring" its special access revenues and costs, without reducing the rates to reflect this $9 million reduction. MCI Opposition at 17.

[239] The same showing is made in BellSouth Direct Case at 23, Cincinnati Direct Case at 2-12, and SWB Direct Case at Attachment C, showing total interstate private line investment assigned only to interstate.

[240] Specifically, Section 36.152(a)(2), Category 2, includes all investment in wideband facilities and C&WF facilities between local central offices and other switching points used by ICs. The LECs have shown that costs associated with interstate wideband facilities are directly assigned to the interstate jurisdiction based on accounting records where feasible. *See* Section 36.155(a).

[241] *See,* Comments and Data Submissions filed July 25, 1986, in CC Docket No. 80-286, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board.

[242] US West, for example, notes that much of the information for the 1986 submissions in the Joint Board proceeding was based on 1984 data, while the filings in this proceeding were based on data up to and including spring of 1987. US West Direct Case at 10.

[243] The shift of costs to the interstate jurisdiction followed. Southwestern Bell asserts, because the allocation factor for NTS investment is the SPF, which is twice the DEM factor used to allocate TS costs. SWB Direct Case at 8-9.

[244] Attachments C and E contain the special access disallowances for COE Category 4.23 and C&WF respectively. In addition to concluding that special access disallowances are required, we found that certain carriers overstated interstate allocations. Those overstatements are contained in Attachment I for COE Category 4.23 and in Attachment J for C&WF. Although these overstatements of interstate allocations do not result in disallowaces, we caution carriers that we will examine their filings closely to ensure that costs that should not allocated to the interstate jurisdiction are not merely shifted among access elements.

Attachment A

Parties in CC Docket No. 88-1, Phase II

LECs filing direct cases are as follows (an * indicates an erratum filing):

Ameritech Operating Companies (Ameritech)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Telephone Companies* (BellSouth)
Centel Telephone Companies (Centel)
Cincinnati Bell Telephone (Cincinnati)
Contel Corporation (Contel)
GTE Operating Companies (GTOCs)
GTE Florida
Lincoln Telephone & Telegraph Company (Lincoln)
Nevada Bell
New England Telephone and Telegraph Company* (New England)
New York Telephone Company* (NYT)
Pacific Bell Telephone Company* (Pacific Bell)
Rochester Telephone Corporation (Rochester)
Southern New England Telephone Company (SNET)
Southwestern Bell Telephone Company* (SWB)
United Telephone System Companies* (United)
Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (US West).

Comments or Oppositions were filed by:

Ad Hoc
AT&T
MCI
Microtel*
TV Users.

Rebuttals were filed by:

Ameritech
Bell Atlantic*
BellSouth*
Centel
Contel
GTE
Nevada
NYNEX
Pacific Bell
Rochester
SNET
SWB
US West

Attachment B

Determination of 1988 Inside Wire Disallowance
(000's)

	Company / Study Area		Acct 6362 Forecast (A)	Acct 6362 Actual (B)	Acct 6362 Overstatement (C=A-B)	Corporate Overhead Factor (D)	Disallowance (E=C*D)
1	AMERITECH	ILLINOIS	$13,796	$12,951	$845	1.1679	$987
2	AMERITECH	OHIO	10,154	6,609	3,545	1.3367	4,739
3	BELLSOUTH		17,093	4,145	12,948	1.2714	16,462
4	GTE	CALIFORNIA	1,796	1,158	639	1.2913	825
5	GTE	FLORIDA	8,979	5,720	3,259	1.2534	4,085
6	GTE	HAWAII	786	381	406	1.4300	580
7	GTE NORTH	INDIANA	1,986	739	1,247	1.3130	1,637
8	GTE NORTH	MICHIGAN	791	233	557	1.3330	743
9	GTE NORTH	MISSOURI	179	62	117	1.3895	162
10	GTE NORTH	OHIO	901	255	645	1.3422	866
11	GTE NORTH	PENNSYLVANIA	959	324	635	1.3589	862
12	GTE SOUTH		1,613	494	1,119	1.2918	1,446
13	GTE SOUTHWEST		1,872	848	1,024	1.3906	1,424
14	NYNEX	NEW ENGLAND	21,817	18,191	3,626	1.4025	5,085
15	NYNEX	NEW YORK	50,682	44,925	5,756	1.3826	7,959
16	PACTEL	CALIFORNIA	47,904	28,746	19,158	1.3349	25,575
17	PACTEL	NEVADA BELL	1,216	854	362	1.5083	546
	SNET		5,918	3,113	2,806	1.2752	3,578
	SOUTHWESTERN BELL	(LESS KANSAS)	24,468	14,639	9,829	1.2567	- 12,352
20	SOUTHWESTERN BELL	(KANSAS)	2,129	1,352	776	1.2372	961
21	U.S. WEST		6,367	3,021	3,346	1.3882	4,645
	TOTALS		$221,406	$148,761	$72,645		$95,518

Sources:

COL A: Forecast Account 6362 expense - 1988 Tariff Review Plan Table COS1P32
See text for discussion of adjustments.
Column: Inside Wire
Row: Plant Specific Expense

COL B: Actual Account 6362 expense - response to FCC Data Request dated 6/23/88, first four months of 1988, annualized and adjusted by the SPF factor to arrive at the interstate portion of the Account 6362.

COL D: 1988 TRP COS1P32; Calculation: 1+((L220+L250)/(L200+L210+L230))
Column: Total Company
Rows: 200 - Plant Specific
210 - Plant Non Spec. Excl Depr & Amort
220 - Customer Oper. Marketing
230 - Customer Oper. Services
250 - Corporate

ATTACHMENT

Correction of the Overstatement of the 1988 Interstate Revenue Requirement
In COE Cat 4.23 Special Access Circuit Equipment
(000's)

	Company / Study Area	COE Cat 4 IS Special Access Investment			Revenue Requirement Factor	COE Cat 4 Revenue Requirement Overstatement	Cat 4.23 to Cat 4 Conversion Factor	COE Cat 4.23 Revenue Requirement Overstatement
		Projected	Actual	Overstatement				
		(A)	(B)	(C=A-B)	(D)	(E=D*C)	(F)	(G=F*E)
1	AMERITECH INDIANA	$54,963	$46,686	$8,277	0.2238	$1,852	0.5703	$1,056
2	AMERITECH OHIO	93,363	86,102	7,261	0.2405	1,746	0.4872	851
3	AMERITECH WISCONSIN	59,291	55,032	4,259	0.2214	943	0.4098	386
4	BELLSOUTH	546,016	477,983	68,033	0.2402	16,341	0.4074	6,657
5	CINCINNATI BELL	21,462	18,718	2,744	0.2115	580	0.3164	184
6	GTE NORTH INDIANA	12,694	9,211	3,483	0.2691	937	0.8431	790
7	GTE NORTH IOWA	1,112	613	499	0.2218	111	0.7541	83
8	GTE NORTH MICHIGAN	4,903	4,311	592	0.2517	149	0.9164	136
9	GTE NORTH OHIO	7,539	5,722	1,817	0.2523	458	0.9633	442
10	GTE NORTH PENNSYLVANIA	4,230	3,409	821	0.2296	188	1.0000	188
11	GTE NORTH WISCONSIN	4,180	2,879	1,301	0.2347	305	0.9417	288
12	GTE NW IDAHO; MONTANA	3,978	2,219	1,759	0.2582	454	0.9278	421
13	GTE NW OREGON; WASHINGTON	15,240	14,527	713	0.2474	176	0.9166	162
14	GTE SOUTHWEST	24,238	22,215	2,023	0.2519	509	0.9831	501
	MOUNTAIN BELL	194,992	173,380	21,612	0.2428	5,247	0.6412	3,365
	NORTHWESTERN BELL	161,542	130,886	30,656	0.2200	6,744	0.4527	3,053
17	NYNEX NEW ENG TEL	207,083	197,486	9,597	0.2469	2,370	0.6665	1,579
18	PACTEL CALIFORNIA	290,890	240,380	50,510	0.2541	12,835	0.3474	4,459
19	SNET	75,748	67,058	8,690	0.2277	1,979	0.7029	1,391
20	SWB ARKANSAS	35,151	26,626	8,525	0.2403	2,049	0.7050	1,444
21	SWB TEXAS	235,398	216,736	18,662	0.2240	4,180	0.2603	1,088
	TOTAL	$2,054,013	$1,802,179	$251,834		$60,156		$28,525

Sources:

Column A: 1988 TRP, COS2(P)32, Line 620, Column K.
Column B: ARMIS Quarterly Report, 1988 2Q, Table 1, Line 620, Column L.
Column D: Revenue Requirement Factor takes into account the effect of a reduction in gross investment on plant specific expenses, depreciation, tax, and return. The data used in calculating the factor are taken from the 1988 TRP, Table COS1(P)32, Column "Total ROR Regulated IS Access." See text for additional explanation.
Column F: The conversion factor was calculated by dividing each carrier's projected COE Category 4.23 interstate special access investment (per the TRP) by its projected COE Category 4 interstate special access investment.

Determination of the Disallowance Due to Miscategorization of COE Cat 4.23
(000's)

	Company / Study Area		COE Cat 4.23 IS Investment Overstatement (A)	Revenue Requirement Factor (B)	COE Cat 4.23 IS Rev Req Disallowance (C=A*B)
1	BELL ATLANTIC		$69,812	0.2436	$17,006
2	GTE NORTH	MICHIGAN	1,291	0.2478	320
3	GTE NORTH -	OHIO	908	0.2478	225
4	GTE NORTH	PENNSYLVANIA	905	0.2478	224
5	GTE NORTHWEST		2,674	0.2493	667
6	GTE SOUTH		563	0.2585	146
7	GTE SOUTHWEST		1,819	0.2519	458
8	NEW ENGLAND TEL		20,082	0.2469	4,958
9	NEW YORK TELEPHONE		3,859	0.2579	995
10	PACIFIC BELL	CALIFORNIA	79,218	0.2541	20,129
	TOTAL		$181,131		$45,129

Notes:

1: Bell Atlantic - disallowances apply to Delaware, New Jersey, Pennsylvania, Virginia, West Virginia, and Washington, D.C.
Row 5: GTE of the Nortwest - disallowance applies only to Idaho.
Row 6: GTE of the South - disallowances apply only to Kentucky and Virginia.
Row 7: GTE of the Southwest - disallowance applies only to Texas.
Row 8: New England Telephone - disalowances apply to Massachusetts and Rhode Island.

Column A: This column reflects the difference between the carriers' projected investment in category 4.23 and our estimate of this investment. Our estimate is based upon data obtained from the carriers in response to our May 20, 1988 Order Designating Issues for Investigation.

Column B: Revenue Requirement Factor takes into account the effect of a reduction in gross investment on plant specific expenses, deprecition, tax and return. The data used in calculating the factor are taken from the 1988 TRP, Table COS1(P)32, Column "Total ROR Regulated IS Access." See text for additional information.

Correction of the Overestimate of the 1988 Revenue Requirement
in Special Access Cable and Wire Facilities
(000s)

	Company / Study Area		Special Access Cable & Wire Facilities Investment			Revenue Requirement	
			Projected	Actual	Overstatement	Factor	Disallowance
			(A)	(B)	(C=A-B)	(D)	(E=C*D)
1	AMERITECH	ILLINOIS	$153,579	$141,421	$12,158	0.2297	$2,793
2	AMERITECH	INDIANA	42,840	33,754	9,086	0.2238	2,033
3	AMERITECH	MICHIGAN	91,878	71,871	20,007	0.2336	4,674
4	AMERITECH	OHIO	84,568	74,853	9,715	0.2405	2,336
5	AMERITECH	WISCONSIN	32,560	25,926	6,634	0.2214	1,469
6	BELL ATLANTIC		475,599	429,136	46,463	0.2430	11,291
7	BELLSOUTH		556,159	495,421	60,738	0.2402	14,589
8	GTE	CALIFORNIA	51,631	43,502	8,129	0.2463	2,002
9	GTE	FLORIDA	31,936	23,058	8,878	0.2787	2,474
10	GTE	HAWAII	10,670	9,761	909	0.2241	204
11	GTE NORTH	ILLINOIS	7,133	5,603	1,530	0.2265	347
12	GTE NORTH	INDIANA	17,165	16,190	975	0.2478	$242
13	GTE NORTH	MICHIGAN	4,934	4,254	680	0.2217	151
14	GTE NORTH	OHIO	7,288	6,011	1,277	0.2523	322
15	GTE NORTH	PENNSYLVANIA	7,859	6,409	1,450	0.2296	333
16	GTE NORTH	WISCONSIN	5,594	4,071	1,523	0.2347	358
17	GTE NORTHWEST	OREGON; WASHINGTON	12,663	11,546	1,116	0.2493	278
18	GTE SOUTH		28,798	24,372	4,426	0.2585	1,144
19	GTE SOUTHWEST		29,558	24,988	4,570	0.2519	1,151
20	MOUNTAIN BELL		150,714	143,769	6,945	0.2428	1,686
21	NORTHWESTERN BELL		130,606	111,753	18,853	0.2200	4,148
22	PACTEL	NEVADA	9,928	7,423	2,505	0.2241	561
23	P.N.B.	TOTAL	60,245	51,634	8,611	0.2210	1,903
24	SWB	ARKANSAS	25,005	24,980	1,025	0.2244	230
25	SWB	OKLAHOMA	42,324	36,507	5,817	0.2244	1,305
26	UNITED CT&T	NORTH CAROLINA	12,275	11,460	815	0.2328	190
27	UNITED TEL	FLORIDA	12,529	11,307	1,222	0.2537	310
28	UNITED TEL	INDIANA	8,391	3,321	5,070	0.2413	1,223
29	UNITED TEL	OHIO	9,541	8,259	1,282	0.2705	347
30	UNITED TEL	PENNSYLVANIA	4,497	3,554	943	0.2090	197
	TOTAL		$2,119,466	$1,866,114	$253,351		$60,290

Sources:
Column A: 1988 TRP, COS2(P)32, Line 630, Column K.
Column B: ARMIS Quarterly Report, 1988 2Q, Table 1, Line 630, Column L.
Column D: Revenue Requirement Factor takes into account the effect of a reduction in gross investment on plant specific expenses, depreciation, tax, and return. The data used in calculating the factor are taken from the 1988 TRP, COS1(P)32, Column "Total ROR Regulated IS Access." See text for additional explanation.

Revenue Requirement Disallowance Expense Resulting from Flowback of Excess Deferred Income Taxes (000s)

Company / Study Area		Revenue Requirement Reduction Estimates: Underlying Current Tariffs (A)	Corrected (B)	Disallowance (C=B-A)
Ameritech	Indiana	$0	$2,285	$2,285
Ameritech	Michigan	0	5,494	5,494
Ameritech	Wisconsin	0	1,917	1,917
Centel	Florida	269	408	139
Centel	Nevada	0	845	845
Cincinnati Bell		107	2,421	2,314
Contel	California	0	258	258
Contel	New York	0	250	250
Contel	Texas	0	219	219
Contel	Virginia	0	228	228
GTE North	Illinois	0	1,079	1,079
GTE North	Indiana	0	2,027	2,027
GTE North	Michigan	0	534	534
GTE North	Ohio	0	1,097	1,097
GTE North	Pennsylvania	0	502	502
GTE North	Wisconsin	0	871	871
GTE North	Iowa	0	196	196
GTE North	Missouri	0	125	125
GTE South		0	3,113	3,113
GTE Southwest		0	2,511	2,511
GTE	Hawaii	0	1,576	1,576
GTE	Florida	0	4,341	4,341
NYNEX	New England	8,730	13,227	4,497
United	Florida	944	1,430	486
United	North Carolina	190	287	98
United	Ohio	651	987	335
United	Pennsylvania	229	346	118
United	Indiana	324	492	167
United Intermountain- Tenn		322	488	166
	Total	$11,766	$49,554	$37,788

Note:

Amounts are based upon carriers' response to data request in DA 88 - 1240 except for Centel, Contel, and GTE. For Centel and Contel, the data are from the carriers' direct case filing. For GTE, the data are from an ex parte filing made on August 31, 1988.

ATTACHMENT

SUMMARY OF INTERSTATE REVENUE REQUIREMENT DISALLOWANCES
(000's)

Company / Study Area	Inside Wire (A)	COE Cat 3 (B)	COE Cat 4.23 (C)	Excess Deferred Taxes Flowback (D)	Total (E=A+B+C+D)
Illinois Bell	$987				$987
Indiana Bell				$2,285	2,285
Michigan Bell				5,494	5,494
Ohio Bell	4,739				4,739
Wisconsin Bell				1,917	1,917
AMERITECH SUBTOTAL	5,726			9,696	15,422
BELL ATLANTIC			$17,006		17,006
BELLSOUTH	16,462				16,462
New England Telephone	5,085	$3,023	4,958	4,497	17,563
New York Telephone	7,959		995		8,954
NYNEX SUBTOTAL	13,044	3,023	5,953	4,497	26,517
cific Bell - California	25,575		20,129		45,704
vada Bell	546				546
PACIFIC TELESIS SUBTOTAL	26,121		20,129		46,250
Southwestern Bell Excl. Kansas	12,352				12,352
Southwestern - Kansas	961				961
SOUTHWESTERN BELL SUBTOTAL	13,313				13,313
US WEST	4,645				4,645
GTE - California	825				825
GTE - Florida	4,085			4,341	8,426
GTE - Hawaii	580			1,576	2,156
GTE Northwest - Idaho			690		690
GTE South	1,446		146	3,113	4,705
GTE Southwest	1,424		458	2,511	4,393
GTE North - Illinois				1,079	1,079
GTE North - Indiana	1,637			2,027	3,664
GTE North - Iowa				196	196
GTE North - Michigan	743		320	534	1,597
GTE North - Missouri	162			125	287
GTE North - Ohio	866		225	1,097	2,188
GTE North - Pennsylvania	862		224	502	1,588
GTE North - Wisconsin				871	871
GTE North Subtotal	4,270		769	6,431	11,470
SUBTOTAL	12,630		2,063	17,972	32,665
UTS - Florida				486	486
UTS - Indiana				167	167
UTS - North Carolina				98	98

SUMMARY OF INTERSTATE REVENUE REQUIREMENT DISALLOWANCES
(000's)

Company / Study Area	Inside Wire (A)	COE Cat 3 (B)	COE Cat 4.23 (C)	Excess Deferred Taxes Flowback (D)	Total (E=A+B+C+D)
UTS - Ohio				335	335
UTS - Pennsylvania				118	118
United IM - Tennessee				166	166
United Inter-Mountain Subtotal				166	166
UTS TOTAL				1,370	1,370
Cincinnati Bell				2,314	2,314
Centel - Florida				139	139
Centel - Nevada				845	845
CENTEL SUBTOTAL				984	984
Contel - California				258	258
Contel - New York				250	250
ntel - Texas				219	219
ntel - Virginia				228	228
CONTEL SUBTOTAL				955	955
Southern New England	3,578				3,578
TOTALS	$95,519	$3,023	$45,151	$37,788	$181,481

Sources:

COLUMN A: Attachment B, Column E.
COLUMN B: Section II of the Order.
COLUMN C: Attachment D, Column C.
COLUMN D: Attachment F, Column C.

SUMMARY OF INTERSTATE SPECIAL ACCESS REVENUE REQUIREMENT DISALLOWANCES
(000's)

Company / Study Area	COE Cat 4.23 (A)	C&WF (B)	INCONSISTENT LOOP COUNTS (C)	TOTAL (D=A+B+C)
Illinois Bell		$2,793		$2,793
Indiana Bell	$1,056	2,033		3,089
Michigan Bell		4,674		4,674
Ohio Bell	851	2,336		3,187
Wisconsin Bell	386	1,469		1,855
AMERITECH SUBTOTAL	2,293	13,305		15,598
BELL ATLANTIC		11,291		11,291
BELLSOUTH	6,657	14,589		21,246
New England Telephone	1,579			1,579
New York Telephone			$16,100	16,100
NYNEX SUBTOTAL	1,579	0	16,100	17,679
Pacific Bell - California	4,459			4,459
Nevada Bell		561		561
PACIFIC TELESIS SUBTOTAL	4,459	561		5,020
Southwestern - Arkansas	1,444	230		1,674
Southwestern - Oklahoma		1,305		1,305
Southwestern - Texas	1,088			1,088
SOUTHWESTERN BELL SUBTOTAL	2,532	1,535		4,067
Mountain States	3,365	1,686		5,051
Northwest Bell	3,053	4,148		7,201
Pacific Northwest Bell		1,903		1,903
US WEST SUBTOTAL	6,418	7,737		14,155
GTE - California		2,002		2,002
GTE - Florida		2,474		2,474
GTE - Hawaii		204		204
GTE NW - Idaho & Montana	421			421
GTE NW - Oregon & Washington	162	278		440
GTE Northwest Subtotal	583	278		861
GTE South		1,144		1,144
GTE Southwest	501	1,151		1,652
GTE North - Illinois		347		347
GTE North - Indiana	790	242		1,032
GTE North - Iowa	83			83
GTE North - Michigan	136	151		287
GTE North - Ohio	442	322		764
GTE North - Pennsylvania	188	333		521
GTE North - Wisconsin	288	358		646
GTE North Subtotal	1,927	1,753		3,680
GTE SUBTOTAL	3,011	9,006		12,017

SUMMARY OF INTERSTATE SPECIAL ACCESS REVENUE REQUIREMENT DISALLOWANCES
(000's)

Company / Study Area	COE Cat 4.23 (A)	C&WF (B)	INCONSISTENT LOOP COUNTS (C)	TOTAL (D=A+B+C)
UTS - Florida		310		310
UTS - Indiana		1,223		1,223
UTS - North Carolina		190		190
UTS - Ohio		347		347
UTS - Pennsylvania		197		197
UTS TOTAL	0	2,267		2,267
Cincinnati Bell	184			184
Southern New England	1,391			1,391
TOTAL	$28,524	$60,291	$16,100	$104,915

Sources:

COLUMN A: Attachment C, Column G.
COLUMN B: Attachment E, Column E.
COLUMN C: Section XI of the Order.

Overstatement of the Interstate Revenue Requirement in COE Cat 4.23
(000's)

Company / Study Area	COE Cat 4 Investment			Revenue Requirement Factor	COE Cat 4 Revenue Requirement	Cat 4.23 to Cat 4 Conversion Factor	Cat 4.23 Revenue Requirement Overstatement
	Forecast	Actual	Overstatement				
	(A)	(B)	(C=A-B)	(D)	(E=C*D)	(F)	(G=E*F)
BELLSOUTH	$1,693,585	$1,638,108	$55,477	0.2402	$13,326	0.4448	$5,927
CINCINNATI BELL	40,990	36,017	4,973	0.2115	1,052	0.3182	335
GTE NORTH OHIO	34,970	33,059	1,911	0.2523	482	0.6455	311
GTE NW IDAHO & MONTANA	27,625	24,649	2,976	0.2582	768	0.7654	588
GTE NW OREGON & WASHIN	70,338	58,500	11,838	0.2474	2,929	0.8344	2,444
NEW ENGLAND	599,444	573,258	26,186	0.2469	6,465	0.7366	4,762
PACTEL CALIFORNIA	936,475	856,508	79,967	0.2541	20,320	0.3646	7,408
SNET SOUTHERN NEW	189,100	171,098	18,002	0.2277	4,099	0.6390	2,619
TOTALS	$3,592,528	$3,391,197	$201,331		$49,441		$24,395

Sources:

Column A: 1988 TRP, COS1(P)32, Line 620, Column E.
Column B: ARMIS Quarterly Report, 1988 2Q, Table I, Line 620, Column G.
Column D: Revenue Requirement Factor takes into account the effect of a reduction in gross investment on plant specific expenses, depreciation, tax, and return. The data used in calculating the 1988 TRP, Table COS1(P)32, Column "Total ROR Regulated IS Access." See text for additional explanation.
Column F: The conversion factor was calculated by dividing each carrier's projected COE Category 4.23 interstate investment (per TRP) by its projected COE Category 4 interstate investment.

Overstatement of the Interstate Revenue Requirement in Cable and Wire Facilities
(000s)

	Company / Study Area		Investment			Revenue Requirement Factor	Revenue Requirement Overstatement
			Projected	Actual	Overstatement		
			(A)	(B)	(C=A-B)	(D)	(E=C*D)
1	AMERITECH	ILLINOIS	$772,907	$730,385	$42,522	0.2297	$9,767
2	AMERITECH	INDIANA	278,621	270,967	7,654	0.2238	1,713
3	AMERITECH	MICHIGAN	574,651	540,303	34,348	0.2336	8,024
4	AMERITECH	OHIO	454,774	449,847	4,927	0.2405	1,185
5	BELL ATLANTIC		2,672,134	2,585,669	86,465	0.2430	21,011
6	BELLSOUTH		4,046,717	3,935,049	111,668	0.2402	26,823
7	GTE	CALIFORNIA	640,220	613,752	26,468	0.2463	6,519
8	GTE	FLORIDA	441,522	422,031	19,491	0.2787	5,432
9	GTE NORTH	ILLINOIS	98,792	95,706	3,086	0.2265	699
10	GTE NORTH	INDIANA	127,305	122,735	4,570	0.2691	1,230
11	GTE NORTH	MICHIGAN	93,266	90,179	3,087	0.2517	777
12	GTE NORTH	PENNSYLVANIA	71,167	68,258	2,909	0.2296	668
13	GTE NORTH	WISCONSIN	88,552	85,930	2,622	0.2347	615
14	GTE NORTHWEST	OREGON: WASHINGTON	179,881	176,525	3,356	0.2210	742
15	GTE SOUTH		249,049	244,178	4,871	0.2585	1,259
16	GTE SOUTHWEST		352,250	346,796	5,454	0.2519	1,374
17	PACTEL	NEVADA	98,340	95,763	2,577	0.2241	578
18	SWB		2,707,906	2,620,878	87,028	0.2244	19,529
19	UNITED TEL	FLORIDA	329,387	323,396	5,991	0.2537	1,520
20	UNITED TEL	INDIANA	46,164	44,820	1,344	0.2413	324
21	U.S. WEST		2,940,579	2,865,238	75,341	0.2323	17,502
	TOTALS		$17,264,184	$16,728,405	$535,779		$127,290

Sources:

Column A: 1988 TRP, COS1(P)32, Line 630, Column B.
Column B: ARMIS Quarterly Report, 1988 2Q, Table 1, Line 630, Column G.
Column D: Revenue Requirement Factor takes into account the effect of a reduction in gross investment on plant specific expenses, depreciation, tax, and return. The data used in calculating the factor are taken from the 1988 TRP, COS1(P)32, Column "Total ROR Regulated IS Access." See text for additional explanation.

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 89-103

In the Matter of

Amendment of Parts 2, 25, 80, and 87 of the Commission's Rules regarding implementation of the Final Acts of the World Administrative Radio Conference for the Mobile Services, Geneva, 1987.

NOTICE OF PROPOSED RULE MAKING

Adopted: April 26, 1989; **Released: May 5, 1989**

By the Commission:

I. INTRODUCTION

1. The purpose of this proceeding is to implement the Final Acts of the 1987 World Administrative Radio Conference for Mobile Services (1987 Mobile WARC) into the Commission's Rules. The 1987 Mobile WARC was broad in scope, covering two-thirds of the International Radio Regulations reserved exclusively to the mobile services. It revised many portions of the international frequency allocations as well as the technical regulations regarding the mobile services, mobile satellite services (MSS), radionavigation, and radiodetermination satellite services (RDSS). The revisions are scheduled to come into force on two different dates, October 3, 1989, and July 1, 1991.

2. This proceeding proposes to modify Parts 2, 25, 80, and 87 to reflect the revisions of the Radio Regulations that become effective on October 3, 1989. It also includes changes to the Radio Regulations from earlier conferences, particularly the 1983 World Administrative Radio Conference for Mobile Services (1983 Mobile WARC), that have not been implemented in the Commission's Rules to date.[1] The 1987 Mobile WARC revisions scheduled to come into effect on July 1, 1991, will be treated in separate rule making proceedings.

II. BACKGROUND

3. Actions taken by the 1967 and 1974 Maritime Conferences paved the way for introducing modern telecommunication technology into the maritime services. By the time of the 1979 World Administrative Radio Conference (1979 WARC) of the International Telecommunications Union (ITU), further revisions to the Radio Regulations were needed to keep up with the requirements of the mobile services. The 1979 WARC, however, did not have the time or resources to cope with the requirements of the mobile services and deferred action to later specialized conferences, pursuant to its Resolution No. 202. The first of these conferences, the 1983 Mobile WARC held in Geneva from February 28 to March 18, 1983, dealt primarily with distress and safety matters; specifically, the Global Maritime Distress and Safety System (GMDSS).[2] The next conference, the 1987 Mobile WARC held in Geneva from September 14 to October 17, 1987, covered a much broader range of mobile telecommunications matters, including provisions for implementing the GMDSS. The purpose of the 1987 Mobile WARC was to review and revise the Radio Regulations concerning the mobile services, the mobile satellite services, and the radionavigation and radiodetermination satellite services.

4. In preparation for the the 1987 Mobile WARC, the Commission instituted a proceeding in 1984 to obtain public comments and recommendations regarding the proposals that the United States (U.S.) would make to the conference.[3] As part of the proceeding, a Federal Advisory Committee was established to serve as a focal point for developing a comprehensive recommendation for the private sector.[4] At the same time, the National Telecommunications and Information Administration (NTIA), which has responsibility for administering federal government use of the spectrum, developed a similar set of proposals through the auspices of the Interdepartment Radio Advisory Committee (IRAC). The Department of State used both recommended sets of proposals to develop the formal U.S. proposals that were submitted to the ITU for consideration at the 1987 Mobile WARC.

5. The U.S. had four main priorities at the 1987 Mobile WARC: (1) implementing the GMDSS system; (2) allocating sufficient frequency spectrum worldwide to ensure the economic viability of MSS; (3) allocating sufficient spectrum to permit establishment of the new RDSS; and (4) rearranging the high frequency (HF) maritime spectrum to meet our national needs.

6. Most of the U.S. objectives were attained either in whole or in part. In the areas of mobile satellite allocations and radio operator requirements, however, the U.S. had serious concerns about the actions taken. Consequently, the delegation made protocol statements that said the U.S. would not accept certain decisions of the conference. (*See* Appendix A attached.) Taking these reservations enables the U.S. to enact domestic provisions different from the international provisions.

7. The Final Acts of the 1987 Mobile WARC provided that the revisions enter into force in two stages. Those changes that pertain to the HF maritime mobile bands (4000-27500 kHz) and the GMDSS, become effective on July 1, 1991. The other allocations, including those pertaining to RDSS and MSS, and general requirements regarding the maritime and aviation services enter into force on October 3, 1989. Those revisions, which become effective on the earlier date, are the subject of this rule making proceeding. The HF band and GMDSS matters, which become effective in 1991, will be addressed in subsequent rule making proceedings.[5]

III. DISCUSSION

8. In reviewing the Final Acts with reference to the Commission's Rules, the following issues are relevant:

(a) What changes should be made to Section 2.106, Table of Frequency Allocations (47 C.F.R. § 2.106)?

(b) What provisions should be adopted for the RDSS?

(c) How was the MSS affected?

(d) What changes to the maritime mobile and aviation services are necessary at this time?

9. *Table of Frequency Allocations.* Generally, the revisions to the international frequency allocations in the Radio Regulations were in agreement with U.S. proposals.[6] Except for modifications for RDSS (1610-1626.5 MHz and 2483.5-2500 MHz) and MSS (1530-1559 MHz and 1626.5-1660.5 MHz) both of which will be discussed subsequently, most of the revisions address the terrestrial radio services. Attached, in Appendix B, is a summary of international footnotes affected by the 1987 Mobile WARC and their status relative to the proposed revision of the Table of Frequency Allocations contained in Appendix C.[7] A discussion of the key allocation matters follows.

10. The allocation changes involving radionavigation and radiobeacon systems adopted at the 1987 Mobile WARC were in accord with U.S. proposals. At 70-90 kHz and 110-130 kHz, we obtained an allocation for pulsed radionavigation systems, albeit on a secondary basis (pursuant to modification of footnote 451). At 415-495 kHz, although the aeronautical radionavigation service (essentially radiobeacons) also was allocated on a secondary basis in Region 2, such beacons were accorded primary status in Cuba, the U.S., and Mexico for the 415-435 kHz band (footnote 469A). We propose to reflect these changes in the Table of Frequency Allocations.

11. A number of regulations affecting the radiodetermination service in the 2900-3300 MHz, 5470-5650 MHz, and 9200-9500 MHz bands were also adopted at the 1987 Mobile WARC. The new regulations, in accordance with U.S. proposals: confined the shipborne interrogator transponder (SIT) system to the 2930-2950 MHz band (footnote 772); removed restrictions on ship radars in the 2900-2920 MHz band (footnote 774 deleted) but retained them in the 9300-9320 MHz band until the year 2001 (footnote 825A); required that responses from radar transponders in 2900-3100 MHz and 9300-9500 MHz bands not be confused with the responses from radar beacons and not cause interference to ship or aeronautical radars (footnote 775A); removed radar beacons and shipborne radars from the 3100-3266 MHz band (footnote 776 deleted); and permitted search and rescue transponders (SARTs) in the 9200-9500 MHz band (footnote 824A). These changes are reflected in the proposed revisions of the Table of Frequency Allocations.

12. On the matter of aeronautical public correspondence, the 1987 Mobile WARC allocated 2 megahertz (1593-1594 MHz and 1625.5-1626.5 MHz, secondarily in the U.S.) for terrestrial public correspondence with aircraft as an initial allocation for pre-operational and experimental purposes. The U.S. position was that aeronautical public correspondence needs should be met through the MSS allocation. After intensive negotiations, the U.S. reluctantly agreed to the 2 megahertz secondary allocation but stated that the U.S. had no intention of implementing these bands for aeronautical public correspondence. We continue to believe that aeronautical public correspondence communications should be met through the MSS or by the proposed U.S. allocation at 900 MHz.[8] Therefore, no change to the Commission's Rules to accommodate this type of communication at the 1.5/1.6 GHz bands is being proposed herein.

13. *Radiodetermination Satellite Service (RDSS).* Sufficient spectrum was allocated by the 1987 Mobile WARC to permit the RDSS to begin operating initially in North America, while ensuring for most areas of the world an international status for RDSS in the Radio Regulations. Thus, the U.S. was successful in establishing international recognition and protection to enable this service to expand globally. After extensive debate and informal coordination, the allocations that finally emerged were the same as those specified in the U.S. domestic table at 1610-1626.5 and 2483.5-2500 MHz. Thus, we propose no domestic change to the Table of Frequency Allocations for the 1.6 and 2.4 GHz bands. The RDSS feeder links, however, currently located in the U.S. at 5117-5183 MHz were allocated internationally at 5150-5216 MHz. Hence, we propose to re-allocate the feeder links (footnote US307) to the 5150-5216 MHz band in accordance with the Radio Regulations (footnote 797A). We expect this change in the feeder links allocation to have only minimal impact because there is only one licensee at present and its system is not due to become operational until 1992.

14. *Mobile Satellite Service (MSS).* Because there is a strong interest in the U.S. for providing domestic mobile satellite communications, particularly for land mobile purposes, the U.S. sought additional frequency spectrum for the MSS. The goal was to provide for introduction of MSS systems worldwide and to ensure international protection from interference for domestic systems. The U.S. proposed to reallocate spectrum in the 1.5 and 1.6 GHz bands (L-band) for MSS from the maritime mobile satellite service (MMSS) and the aeronautical mobile satellite (route) service (AMSS(R)). Simply put, we proposed to re-allocate 57.5 megahertz of spectrum for the MSS in the 1530-1559 MHz (downlink) and 1631.5-1660 MHz (uplink) bands. Further, the allocations would stipulate that priority access for safety and distress communications be given to the MMSS in the 1530-1544 MHz and 1631.5-1645.5 bands, and the AMSS(R) in the 1545-1559 MHz and 1646.5-1660 MHz bands.

15. The 1987 Mobile WARC, however, did not allocate spectrum to a generic MSS service as we proposed. Instead, spectrum in the 1530-1559 MHz and 1626.5-1660.5 MHz bands was re-allocated to be shared both primarily and secondarily among the land, aeronautical, and maritime mobile satellite services. The international allocation adopted at the 1987 Mobile WARC is summarized as follows:

> 6 megahertz were allocated to the land mobile satellite service (LMSS) on a shared co-primary basis with the MMSS at 1530-1533 MHz and 1631.5-1634.5 MHz;
>
> 27 megahertz were allocated to the LMSS on a secondary basis to MMSS for non-speech, low-bit rate data systems at 1533-1544 MHz, 1626.5-1631.5, and 1634.5-1645.5 MHz;
>
> 2 megahertz (no change) continued to be allocated to the general MSS for distress and safety communications at 1544-1545 MHz and 1645.5-1646.5 MHz;

20 megahertz (decreased from 28 megahertz) continued to be allocated to the AMSS(R) at 1545-1555 MHz and 1646.5-1656.5 MHz and may be authorized by administrations for public correspondence with aircraft earth stations; and

8 megahertz was re-allocated from the AMSS(R) to the LMSS on a primary basis at 1555-1559 MHz and 1656.5-1660.5 MHz and may be authorized by administrations for aircraft and ship earth stations to communicate with space stations in the LMSS.

16. Thus, the U.S. was partially successful in establishing additional spectrum for sharing between the mobile satellite services generally. The allocations, however, are not available for all three services in as general a nature as we had proposed. Only 8 megahertz (1555-1559 MHz and 1656.5-1660.5 MHz) may be authorized for all three mobile satellite services (*i.e.*, shared among the land, aeronautical, and maritime mobile satellite services). An additional 33 megahertz (1530-1544 MHz and 1626.5-1645.5 MHz) was allocated for LMSS both co-primarily and secondarily with the MMSS. Because the allocations were less than sought, the U.S. took a formal reservation to use the L-band spectrum in the way most appropriate to satisfy its particular MSS requirements while recognizing the priority of AMSS(R) and MMSS safety communications. (*See* Appendix A attached.)

17. The Commission's current Rules provide for the L-band to be shared between the MSS and AMSS(R) as follows:

9 megahertz are allocated for MSS on a secondary basis to AMSS(R) at 1545-1549.5 MHz and 1646.5-1651 MHz; and

18 megahertz are allocated to MSS on a co-primary basis with AMSS(R) for the 1549.5-1558.5 MHz and 1651-1660 MHz bands pursuant to footnote US308 which stipulates that AMSS(R) requirements that cannot be satisfied in the previous primary AMSS(R) bands shall have priority access with real time preemptive capability for communications in the MSS.

18. Although the domestic allocation differs from that adopted by the 1987 Mobile WARC, the U.S. maintained its flexibility with regard to the L-band spectrum by its reservation on this matter. The Commission's decision concerning the reallocation of the L-band spectrum shared between the MSS and AMSS(R) is currently pending further reconsideration.[9] In addition, the Commission has received a petition requesting U.S. implementation of the LMSS allocations in the MMSS spectrum.[10] These matters concerning the L-band spectrum will be addressed in separate proceedings. Therefore, we propose only to reflect the international changes to the Table of Frequency Allocations (columns 1-3) at this time. No changes to the MSS domestic allocations in the Table of Frequency Allocation (columns 4-7) are proposed herein. We wish to note, however, that through the U.S. protocol statement the Commission has the flexibility to use this spectrum in the manner appropriate to its particular needs, that is, to maintain or modify the U.S. allocation in accordance with our domestic satellite radio communications requirements.

19. *Maritime Mobile and Aviation Services.* All of the technical and operational revisions to the Radio Regulations need not be reflected in the Commission's Rules. Several revisions were merely editorial in nature. Others were not relevant to domestic regulations or are unnecessary due to existing equipment design. Some revisions, such as those to accommodate the GMDSS, are premature with respect to domestic implementation plans and are best addressed in separate proceedings at a later date.[11] A few provisions affecting the maritime mobile and aviation services that become effective on October 3, 1989, are discussed here.

20. In anticipation of the implementation of the GMDSS, the 1987 Mobile WARC adopted more stringent frequency tolerances for maritime transmitters to improve the operational reliability of the automated digital communication systems at an early stage. Therefore, some of the frequency tolerances applicable to transmitters in the maritime services, contained in Section 80.209 (47 C.F.R. § 80.209), need to be revised. For narrow-band direct-printing (NBDP) and data station transmitters in the bands 100-27500 kHz, a tolerance of 10 Hz was specified in the Radio Regulations for all coast and ship station transmitters installed after January 1, 1992. Previously, the tolerance was 15 Hz for coast station and 20 Hz for ship station transmitters. Therefore, we propose to require all coast and ship stations in the band 100-27500 kHz to have a 10 Hz frequency tolerance for any NBDP and data station transmitters installed after January 1, 1992. Similarly, for digital selective calling (DSC), the 1987 Mobile WARC adopted a frequency tolerance of 10 Hz for all coast and ship station transmitters installed after January 1, 1992. Current Commission Rules, require DSC coast station transmitters to have a tolerance of 10 Hz after January 1, 1990, but DSC ship station transmitters are not required to comply until January 1, 1995. Thus, we propose leaving the January 1, 1990, date for coast stations but changing the ship station date from January 1, 1995, to January 1, 1992.

21. Similarly, the Radio Regulations specify more stringent emission limits for single-sideband radiotelephony transmitters operating in the bands between 1605 and 27500 kHz in Region 2 (Region 2 includes the U.S.). The new emission limit is 28 decibels (dB) below the mean power (*i.e.*, 31 dB below the peak envelope power) on frequencies removed from the assigned frequency by more than 50 percent and up to 150 percent of the authorized bandwidth. The Commission's Rules in Section 80.211 (47 C.F.R. § 80.211), however, only requires 25 dB under the same conditions. Thus, we are proposing to change the Commission's Rules to require emissions to be attenuated 28 dB relative to the mean power to comply with the requirements of the Radio Regulations. To minimize any possible burden, however, we are proposing that only transmitters installed after February 1, 1992, meet this requirement. Because the new standards are only slightly more stringent than the present limitations, existing installations would continue to be acceptable. A review of our type acceptance data indicates that most equipment being produced today complies with the new specifications. The proposed change, however, will ensure that future equipment meets or exceeds international standards.

22. Several other changes are also proposed to incorporate various operational procedures adopted by the 1987 Mobile WARC or to update and clarify existing

rules. To reflect the new frequencies adopted by 1987 Mobile WARC below 4 MHz (455.5, 458.5, 2177, and 2189.5 kHz for DSC and 2191 kHz for radiotelephony calling), we propose amending Sections 80.359 and 80.369 (47 C.F.R. §§ 80.359 and 80.369), respectively.[12] We further propose to replace the details regarding the NBDP technical and operating requirements contained in Sections 80.142 and 80.219 (47 C.F.R. §§ 80.142 and 80.219) with references to the appropriate CCIR recommendations that contain the relevant information. Section 80.379 (47 C.F.R. § 80.379) is proposed to be modified to clarify that aircraft may use frequency 156.800 MHz (channel 16) at any altitude for VHF distress and safety purposes and, in accordance with current Commission provisions, may continue to use it for general calling purposes below 1,000 feet. Similarly, Section 87.187 (47 C.F.R. § 87.187) would also be amended to clarify the permitted use by aircraft of the maritime distress frequency 156.800 MHz. We propose to amend paragraph 87.187(o) by adding a reference to paragraph 87.303(d) to focus attention that the band 1530-1535 MHz will be re-allocated to the MMSS on a primary basis effective January 1, 1990.[13] We also propose to editorially amend paragraph 87.187(x) to bring it into conformity with the definitions of stations in the terrestrial and satellite radio services.

IV. MISCELLANEOUS

23. New definitions are proposed to be consistent with those adopted by the 1987 Mobile WARC for aeronautical route (R) and off-route (OR) services, aeronautical mobile satellite (R) and (OR) services, land earth station, base earth stations, and land mobile earth station. We also propose to reflect the revision of the RDSS definition by adding the sentence "This service may also include feeder links necessary for its own operation."

24. The revision of Articles 55 and 56 of the Radio Regulations concerning radio operators, radio equipment maintainers, and their certification, was one of the most contentious issues at the 1987 Mobile WARC. In our view, mandatory requirements for full-time radio equipment maintainers to be on board vessels were adopted unnecessarily by the conference. The issue of providing maintenance personnel on board ships was the single most controversial issue between the developing and developed countries. Ultimately, the issue could not be resolved and the U.S. was joined by 22 other countries in a reservation (with 2 other countries submitting separate reservations, for a total of 24) against the new maintenance provisions in Articles 55 and 56. (*See* Appendix A attached.) Because these 24 countries represent much of the world's shipping fleet, the weight of the reservation is significant. Under the reservation, the U.S. maintains the flexibility with regard to the GMDSS requirements. No changes to the Commission's Rules are suggested at this time. This matter will be addressed in the future GMDSS proceeding, as necessary.[14]

V. REGULATORY FLEXIBILITY ACT ANALYSIS

25. In accordance with Section 605 (b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605(b), the Commission certifies that these rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. For the most part, the changes proposed herein merely reflect an update of international requirements that comport with existing U.S. requirements. In those instances where more stringent frequency tolerances are specified for maritime transmitters, we propose an effective date of sufficient length to minimize any possible burden to equipment manufacturers or users. Likewise, where new emission limits are specified, we also propose to minimize the impact by permitting the continuation of existing equipment currently in use. The proposed changes will ensure that future equipment meet or exceed the international standards without causing a significant economic impact on any entity.

VI. PAPERWORK REDUCTION ACT STATEMENT

26. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection, or recordkeeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public.

VII. PROCEDURAL MATTERS

27. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* 47 C.F.R. § 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. 47 C.F.R. § 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. 47 C.F.R. § 1.1203.

28. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. 47 C.F.R. § 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. 47 C.F.R. § 1.1206.

29. Authority for issuance of this *Notice* is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r). Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before **June 5, 1989** and reply comments on or before **June 20, 1989.** All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street N.W., Washington, D.C. 20554.

30. A copy of this *Notice* shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

31. In order to avoid unduly burdening the Federal Register and to save the approximate $7,800 in printing costs, we are publishing a summary of this Notice of Proposed Rule Making in the Federal Register without the appendices that contain the proposed rules and reference summaries. Copies of the entire document are available from the Commission's duplication contractor: International Transcription Service, Inc., Suite 140, 2100 M Street N.W., Washington, D.C. 20037; telephone 202-857-3800. This procedure satisfies notice requirements as well as the needs of the public while saving the Commission significant printing costs.

32. Regarding questions on technical matters covered in this document, contact Kathryn S. Hosford, Room 5114, Private Radio Bureau, Federal Communications Commission, 1919 M Street N.W., Washington, D.C. 20544; telephone 202-632-7197.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Generally, the revisions of the 1987 Mobile WARC superseded those changes called for by the 1983 Mobile WARC. However, a few changes remaining from the 1983 Mobile WARC are still relevant and those are included herein.

[2] The GMDSS will replace the present maritime distress and safety system which relies on ship-to-ship distress alerting using manual Morse code. The GMDSS will rely primarily on ship-to-shore distress alerting using satellites and high frequency (HF) terrestrial systems employing digital selective calling (DSC) techniques. This system is expected to be phased in from 1992 to 1999.

[3] *See* Report and Order in General Docket No. 84-607, 2 FCC Rcd 821 (1987).

[4] *See* Memorandum Opinion and Order in General Docket No. 84-607, FCC 85-88, 50 Fed. Reg. 14451 (1985), adopted February 22, 1985, released March 29, 1985.

[5] Because of the magnitude of the revisions to the Radio Regulations, three rule making proceedings are planned to incorporate the changes into the Commission's Rules: (1) the instant proceeding containing those provisions that enter into force in 1989; (2) a second proceeding incorporating the HF band (4000-27500 kHz) revisions that become effective in 1991; and (3) a final Docket implementing the GMDSS in the maritime service. *See* Public Notice, 3 FCC Rcd 6780 (1988) (hereafter cited as Implementation of the 1987 Mobile WARC).

[6] The notable exception was the revisions to the 1530-1559 MHz and the 1626.5-1660.5 MHz bands where the U.S. took a reservation. *See* Appendix A attached and separate discussion regarding the MSS.

[7] Because revisions to the 4000-27500 kHz band (HF band) are not effective until July 1, 1991, changes to the 4000-27500 kHz portion of the Table of Frequency Allocations are not included in Appendix C but will be addressed in a subsequent proceeding. *See* Implementation of the 1987 Mobile WARC, *supra*.

[8] *See* Notice of Proposed Rule Making in General Docket No. 88-96, 3 FCC Rcd 2436 (1988).

[9] *See* Report and Order in General Docket Nos. 84-1231, 84-1233, and 84-1234, 2 FCC Rcd 1825 (1986); and Memorandum Opinion and Order in General Docket Nos. 84-1231, 84-1233, and 84-1234, 2 FCC Rcd 6830 (1987).

[10] *See* Petition for Rule Making, RM-6459, filed by Geostar Messaging Corporation, June 1988, requesting the Commission to amend the Table of Frequency Allocations (47 C.F.R. § 2.106) and make other rule provisions for a digital LMSS.

[11] *See* Implementation of the 1987 Mobile WARC, *supra*.

[12] New frequencies and requirements for the maritime mobile service operating in the 4000-27500 kHz bands are not effective until July 1, 1991. They will be addressed in a subsequent proceeding. *See* Implementation of the 1987 Mobile WARC, *supra*.

[13] Aeronautical telemetry users in the band may continue their operations on a secondary non-interference basis until mobile satellite systems are implemented but should be aware that they may have to relocate at some future date. We are not proposing to revise the U.S. Table of Frequency Allocations with respect to 1530-1535 MHz band at this time.

[14] *See* Implementation of the 1987 Mobile WARC, *supra*.

APPENDIX A

FINAL PROTOCOL STATEMENTS
(to the 1987 Mobile WARC)

No. 51

For the Federal Republic of Germany, Australia, Austria, the Commonwealth of the Bahamas, Belgium, Canada, Denmark, the United States of America, Finland, France, Ireland, the Republic of Liberia, the Republic of Malta, Monaco, Norway, New Zealand, the Republic of Panama, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland, the Singapore, Sweden and the Confederation of Switzerland:

The Final Acts of the World Administrative Radio Conference for the Mobile Services, Geneva, 1987, would impose on all countries rigid obligations to require on-board passenger ships with more than 12 passengers and on-board cargo ships of 300 tons gross tonnage and upwards engaged on international voyages beyond the range of MF coast stations, the carriage of personnel certificated for the maintenance of shipborne equipment for distress and safety communications. The consequences would be an unnecessary and unacceptable burden upon worldwide maritime community.

Furthermore, these obligations would be inconsistent with the actions of the Maritime Safety Committee of the International Maritime Organization which, in May 1987, endorsed the principle of flexibility in the choice of means of maintaining shipborne equipment for distress and safety purposes. Under these circumstances the Delegations making this statement declare that:

1. Their Administrations do not accept any of the new obligations which might be held to stem from Articles 55 (Rev.) and 56 (Rev.) of the Radio Regulations relating to the mandatory carriage on board ships of personnel certificated for the on-board maintenance of shipborne radio and electronic equipment.

2. Their Administrations will take action by all appropriate means to ensure the necessarily high standards of maintenance and operational availability of shipborne radio equipment essential for distress and safety communications.

No. 58

For the United States of America:

The Delegation of the United States of America formally declares that the USA does not, by signature of those Final Acts on its behalf, accept certain decisions taken by this Conference in regard to the Table of Frequency Allocations and the associated footnotes, and therefore, the USA:

In view of the fact that the Conference has unduly restricted allocations for mobile satellite services in the bands 1 530 - 1559 MHz and 1 626.5 - 1 660.5 MHz, states its intention to utilize these bands in the way most appropriate to satisfy its particular mobile satellite services requirements recognizing the priority of AMSS(R) and maritime safety communications.

No. 67

For the United States of America:

With reference to statement No. 44 by the Government of the Republic of Cuba, the Government of the United States of America notes that the United States presence in Guantanamo is by virtue of a treaty in force; the United States reserves the right to meet its radiocommunication requirements there as heretofore.

APPENDIX B

SUMMARY OF INTERNATIONAL FOOTNOTES AFFECTED BY THE 1987 MOBILE WARC IN RELATION TO THE PROPOSED REVISION OF THE U.S. TABLE OF FREQUENCY ALLOCATIONS

Notes added or retained	Notes not incorporated or deleted	Notes not applicable to the U.S.	Notes waiting July 1, 1991 effective date
448	458	453A	500
451	470A	464A	500A*
469A	473	466A	500B*
471	480A	469	501
472	583	489	505
472A	590	554	517
474	595	572A	520
497	680	587	520A
593	681	589	520B
609A	698	590A	529A
613	699	694A	
613A	700	613B	
642	704A	621	*1983 version added
645B	726B	627A	
649	728	645A	
649A	729	660A	
726A	729A	674	
727A	730A	677A	
734B	731B	686A	
775A	733A	692A	
797A	735	695A	
824A	753A	697	
825A	772	701	
	774	707A	
	775	712A	
	776	723A	
		731	
		731A	
		731C	
		731D	
		733B	
		733C	
		733D	
		733E	
		733F	
		734A	
		743A	
		753	
		753B	
		753C	
		753D	
		753E	
		754A	
		797B	

APPENDIX C

Parts 2, 25, 80 and 87 of Title 47 of the Code of Federal Regulations would be amended as follows:

1. The authority citation for Part 2 would continue to read as follows:

AUTHORITY: Sec. 4, 302, 303, 307, 48 stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303, 307, unless otherwise noted.

2. Section 2.1 would be amended by revising the definition for *Radiodetermination-Satellite Service* and adding the others in the correct alphabetical position:

§ 2.1 Terms and definitions.

Aeronautical Mobile Off-Route (OR) Service. An aeronautical mobile service intended for communications, including those relating to flight coordination, primarily outside national or international civil air routes. (RR)

Aeronautical Mobile Route (R) Service. An aeronautical mobile service reserved for communications relating to safety and regularity of flight, primarily along national or international civil air routes. (RR)

Aeronautical Mobile-Satellite Off-Route (OR) Service. An aeronautical mobile-satellite service intended for communications, including those relating to flight coordination, primarily outside national and international civil air routes. (RR)

Aeronautical Mobile-Satellite Route (R) Service. An aeronautical mobile-satellite service reserved for communications relating to safety and regularity of flights, primarily along national or international civil air routes. (RR)

Base Earth Station. An earth station in the fixed- satellite service or, in some cases, in the land mobile-satellite service, located at a specified fixed point or within a specified area on land to provide a feeder link for the land mobile- satellite service. (RR)

Land Earth Station. An earth station in the fixed- satellite service or, in some cases, in the mobile-satellite service, located at a specified fixed point or within a specified area on land to provide a feeder link for the mobile-satellite service. (RR)

Land Mobile Earth Station. A mobile earth station in the land mobile-satellite service capable of surface movement within the geographical limits of a country or continent. (RR)

Radiodetermination-Satellite Service. A radiocommunication service for the purpose of radiodetermination involving the use of one of more space stations. This service may also include feeder links necessary for its own operation. (RR)

3. In Section 2.104, paragraph (c)(3) would be revised to read as follows:

§ 2.104 International Table of Frequency Allocations.

* * * * *

(c) * * *

(3) The "European Maritime Area" is bounded to the north by a line extending along parallel 72^0 North from its intersection with meridian 55^0 East of Greenwich to its intersection with meridian 5^0 West, then along meridian 5^0 West to its intersection with parallel 67^0 North, thence along parallel 67^0 North to its intersection with meridian 32^0 West; to the west by a line extending along meridian 32^0 West to its intersection with parallel 30^0 North; to the south by a line extending along parallel 30^0 North to its intersection with meridian 43^0 East; to the east by a line extending along meridian 43^0 East to its intersection with parallel 60^0 North, thence along parallel 60^0 North to its intersection with meridian 55^0 East and thence along meridian 55^0 East to its intersection with parallel 72^0 North.

* * * * *

4. Section 2.106 would be amended by revising the Table of Frequency Allocations and subsequent Footnotes in the appropriate positions to read as follows:

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation kHz	Region 2 Allocation kHz	Region 3 Allocation kHz	GOVERNMENT Allocation kHz	NON-GOVERNMENT Allocation kHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*		*	*		*
14-19.95			14 - 19.95	14 - 19.95		
* * *			FIXED MARITIME MOBILE	Fixed	* * *	
			448 ~~US288~~ US294	448 ~~US288~~ US294		
*	*		*	*		*
20.05 - 70			20.05 - 59	20.05 - 59		
* * *			FIXED MARITIME MOBILE	FIXED	* * *	
			448 ~~US288~~ US294	448 ~~US288~~ US294		
			59 - 61	59 - 61		
			* * *	* * *		* * *
			61 - 70	61 - 70		
			FIXED MARITIME MOBILE	FIXED	* * *	
			448 ~~US288~~ US294	448 ~~US288~~ US294		

§ 2.106 Table of Frequency Allocations

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
			GOVERNMENT	NON-GOVERNMENT		
Region 1 Allocation kHz	Region 2 Allocation kHz	Region 3 Allocation kHz	Allocation kHz	Allocation kHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
70 - 72	70 - 90	70 - 72	70 - 90	70 - 90		
* * *	* * *	* * *	FIXED MARITIME MOBILE Radiolocation	FIXED Radiolocation	* * *	
72 - 84		72 - 84				
* * *		* * *				
84 - 86		84 - 86				
* * *		* * *				
86 - 90		86 - 90	448 451 ~~US288~~ US294	448 451 ~~US288~~ US294		
* * *		* * *				

§ 2.106 Table of Frequency Allocations

§ 2.106 Table of Frequency Allocations

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation kHz	Region 2 Allocation kHz	Region 3 Allocation kHz	GOVERNMENT Allocation kHz	NON-GOVERNMENT Allocation kHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
90 - 110			90 - 110	90 - 110		
RADIONAVIGATION 453 Fixed ~~Maritime Mobile 448~~ 453A 454			* * *	* * *	* * *	
110 - 112	110 - 130	110 - 112	110 - 130	110 - 130		
* * *	* * *	* * *	FIXED MARITIME MOBILE Radiolocation	FIXED MARITIME MOBILE Radiolocation	* * *	
112 - 115		112 - 117.6				
* * *		* * *				
115 - 117.6						
* * *						
117.6 - 126		117.6 - 126				
* * *		* * *				
126 - 129		126 - 129				
* * *		* * *				
129 - 130		129 - 130				
* * *		* * *	451 454 US294	451 454 US294		

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation kHz	Region 2 Allocation kHz	Region 3 Allocation kHz	GOVERNMENT Allocation kHz	NON-GOVERNMENT Allocation kHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
130 - 148.5	130 - 160	130 - 160	130 -160	130 - 160		
MARITIME MOBILE /FIXED/	* * *	* * *	* * *	* * *	* * *	
454 457 ~~458~~						
148.5 - 255						
BROADCASTING						
	160 - 190	160 -190	160 - 190	160 -190		
	* * *	* * *	* * *	* * *	* * *	
	190 - 200		190 - 200	190 - 200		
	* * *		* * *	* * *		
	200 - ~~285~~ 275	200 - 285	200 - 275	200 - 275		
	AERONAUTICAL RADIONAVIGATION Aeronautical Mobile	AERONAUTICAL RADIONAVIGATION Aeronautical Mobile	* * *	* * *	* * *	
~~458~~ 460 461 462						
255 - 283.5						
BROADCASTING /AERONAUTICAL RADIONAVIGATION/ 463						

§ 2.106 Table of Frequency Allocations

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation kHz	Region 2 Allocation kHz	Region 3 Allocation kHz	GOVERNMENT Allocation kHz	NON-GOVERNMENT Allocation kHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	275 - 285		275 - 285	275 - 285		
	AERONAUTICAL RADIONAVIGATION		* * *	* * *		
	Aeronautical Mobile					
	Maritime Radionavigation (radiobeacons)					
458-462 464 464A						
283.5 - 315						
MARITIME RADIONAVIGATION (radiobeacons) 466 /AERONAUTICAL RADIONAVIGATION/ 458- 464A 465 466A	285 - 315 * * *		285 - 325 * * *	285 - 325 * * *	* * *	
315 - 325	315 - 325	315 - 325				
* * *	* * *	* * *				
*	*		*	*	*	

§ 2.106 Table of Frequency Allocations

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation kHz	Region 2 Allocation kHz	Region 3 Allocation kHz	GOVERNMENT Allocation kHz	NON-GOVERNMENT Allocation kHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
415 - 435	415 - 495		415 - 435	415 - 435		
* * *	MARITIME MOBILE 470 Aeronautical Radionavigation 470A		AERONAUTICAL RADIONAVIGATION MARITIME MOBILE 470 469A US294	AERONAUTICAL RADIONAVIGATION MARITIME MOBILE 470 469A US294	* * *	
435 - 495			435 - 495	435 - 495		
MARITIME MOBILE 470 Aeronautical Radionavigation 465 471 472A	469 469A 471 472A		MARITIME MOBILE 470 Aeronautical Radionavigation 471 472A US231 US294	MARITIME MOBILE 470 471 472A US231 US294	* * *	
*	*		*	*		*

§ 2.106 Table of Frequency Allocations

§ 2.106 Table of Frequency Allocations

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation kHz	Region 2 Allocation kHz	Region 3 Allocation kHz	GOVERNMENT Allocation kHz	NON-GOVERNMENT Allocation kHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
505 - 526.5	505 - 510	505 - 526.5	505 - 510	505 - 510		
MARITIME MOBILE 470 /AERONAUTICAL RADIONAVIGATION/ 473-	* * *	MARITIME MOBILE 470 474 /AERONAUTICAL RADIONAVIGATION/ Aeronautical Mobile Land Mobile	* * *	* * *	* * *	
465 471 474 475 476	510 - 525 MOBILE 474 AERONAUTICAL RADIONAVIGATION	471	510 - 525 AERONAUTICAL RADIONAVIGATION (radiobeacons) MARITIME MOBILE (Ships only) 474 US14 US18 US225 US232-	510 - 525 AERONAUTICAL RADIONAVIGATION (radiobeacons) MARITIME MOBILE (Ships only) 474 US14 US18 US225 US232-	* * *	518 kHz is used for international NAVTEX in the Maritime Mobile Service
	525 - 535 * * *		525 - 535 * * *	525 - 535 * * *	* * *	* * *
526.5 - 1 606.5 * * *		526.5 - 535 * * *				

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation kHz	Region 2 Allocation kHz	Region 3 Allocation kHz	GOVERNMENT Allocation kHz	NON-GOVERNMENT Allocation kHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	535 - 1 605	535 - 1606.5	535 - 1 605	535 - 1 605		
	* * *	* * *		* * *	* * *	
	1 605 - 1 625		1 605 - 1 615	1 605 - 1 615		
	BROADCASTING 480		* * *	* * *	* * *	* * *
1 606.5-1625		1 606.5 - 1 800				
		* * *				
MARITIME MOBILE 480A /FIXED/ /LAND MOBILE/			1 615 - 1 625	1 615 - 1 625		
			* * *	* * *	* * *	
483 484	480A 481					
1 625 - 1 635	1 625 - 1 705		1 625 - 1 705	1 625 - 1 705		
* * *	BROADCASTING 480 /FIXED/ /MOBILE/ Radiolocation		* * *	* * *	* * *	
1 635 - 1 800	480A 481					
MARITIME MOBILE 480A /FIXED/ /LAND MOBILE/	1 705 - 1 800		1 705 - 1 800	1 705 - 1 800		
	* * *		* * *	* * *	* * *	
483 484 488						

§ 2.106 Table of Frequency Allocations

§ 2.106 Table of Frequency Allocations

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation kHz	Region 2 Allocation kHz	Region 3 Allocation kHz	GOVERNMENT Allocation kHz	NON-GOVERNMENT Allocation kHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1 800 - 1 810	1 800 - 1 850	1 800 - 2 000	1 800 - 1 900	1 800 - 1 900		
* * *	AMATEUR	* * *		* * *	* * *	
1 810 - 1 850						
* * *	489-					
1 850 - 2000	1 850 - 2 000					
* * *	AMATEUR FIXED MOBILE except aeronautical mobile RADIOLOCATION RADIONAVIGATION		1 900 - 2 000	1 900 - 2 000		
			* * *	* * *	* * *	
	489- 494					
*	*		*	*	*	
2 173.5 - 2 190.5			2 173.5-2 190.5	2 173.5-2 190.5		
	MOBILE (distress and calling)		MOBILE (distress and calling)	MOBILE (distress and calling)	* * *	* * *
	500 501 500A 500B		500 501 US279 500A 500B	500 501 US279 500A 500B		
*	*		*	*	*	

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
74.8 - 75.2			74.8 - 75.2	74.8 - 75.2		
	AERONAUTICAL RADIONAVIGATION		* * *	* * *	* * *	* * *
	572 572A					
75.2 - 87.5	75.2 - 75.4		75.2 - 75.4	75.2 - 75.4		
* * *	* * *		* * *	* * *		
	75.4 - 76	75.4 - 87	75.4 - 76	75.4 - 76		
	* * *	* * *		* * *	* * *	
	76 - 88		76 - 88	76 - 88		
	* * *		* * *	* * *	* * *	
		87 - 100				
		* * *				
87.5 - 100						
* * *						

§ 2.106 Table of Frequency Allocations

§ 2.106 Table of Frequency Allocations

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	88 - 100		88 - 108	88 - 108		
	* * *		* * *	* * *	* * *	
100 - 108						
BROADCASTING						
582 ~~583~~ - 584 585						
586 587 588 589 ~~590~~ -						
108 - 117.975			108 - 117.975	108 - 117.975		
AERONAUTICAL RADIONAVIGATION			* * *	* * *		
590A						
*	*		*	*		*
136 - 137			136 - 137	136 - 137		
AERONAUTICAL MOBILE (R)			* * *	* * *	* * *	
Fixed						
Mobile except aeronautical mobile(R)						
591 595 594A						
*	*		*	*		*

§ 2.106 Table of Frequency Allocations

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
149.9-150.05			149.9-150.05	149.9-150.05		
RADIONAVIGATION-SATELLITE			RADIONAVIGATION-SATELLITE	RADIONAVIGATION-SATELLITE		
609 609A			609A	609A		
150.05 - 153	150.05 - 156.7625		150.05 - 150.8	150.05 - 150.8		
* * *	FIXED MOBILE		* * *	* * *		
			150.8 - 156.2475	150.8 - 152		
				* * *	* * *	
				152 - 152.255		
	611 613 613A		* * *	* * *	* * *	
				152.255 - 152.495		
				* * *	* * *	
				152.495-152.855		
				* * *	* * *	

§ 2.106 Table of Frequency Allocations

§ 2.106 Table of Frequency Allocations

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
				152.855-156.2475		
				* * *	* * *	
153 - 154						
* * *						
154 - 156.7625						
FIXED MOBILE except aeronautical mobile (R)						
613 613A						
			156.2475-157.0375	156.2475-157.0375		
				MARITIME MOBILE NG117		

§ 2.106 Table of Frequency Allocations

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
156.7625 - 156.8375						
* * *						
156.8375 - 174	156.8375 - 174					
FIXED MOBILE except aeronautical mobile	* * *		613 613A US77 US106 US107 US266	613 613A US77 US106 US107 US266		
			157.0375-157.1875	157.0375-157.1875		
613 613B 614 615			* * *	* * *	* * *	
*	*		*	*	*	
174 - 223	174 - 216	174 - 223	174 - 216	174 - 216		
* * *	* * *	* * *	* * *	* * *	* * *	
	216 - 220 FIXED MARITIME MOBILE Radiolocation 627 627A		216 - 220	216 - 220		
			* * *	* * *	* * *	
*	*		*	*	*	

§ 2.106 Table of Frequency Allocations

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1	Region 2	Region 3	GOVERNMENT	NON-GOVERNMENT		

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
328.6 - 335.4 AERONAUTICAL RADIONAVIGATION 645 645A			328.6 - 335.4 * * *	328.8 - 335.4 * * *		
*	*		*	*	*	
399.9 - 400.05 RADIONAVIGATION-SATELLITE 609 645B			399.9 - 400.05 RADIONAVIGATION SATELLITE 645B	399.9 - 400.05 RADIONAVIGATION SATELLITE 645B		
*	*		*	*	*	
406 - 406.1 MOBILE-SATELLITE (Earth-to-space) 649 649A			406 - 406.1 MOBILE-SATELLITE (Earth-to-space) 649 649A	406 - 406.1 MOBILE-SATELLITE (Earth-to-space) 649 649A		
*	*		*	*	*	

§ 2.106 Table of Frequency Allocations

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
			GOVERNMENT	NON-GOVERNMENT		
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	Allocation MHz	Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
420 - 430			420 - 450	420 - 450		
* * *			* * *	* * *	* * *	
430 - 440	430 - 440					
* * *	RADIOLOCATION Amateur 653 658 659 660 660A 663 664					
440 - 450						
* * *						
*	*		*	*		*
470 - 790	470 - 512	470 - 585	470 - 512	470 - 512		
BROADCASTING	* * *	* * *		* * *	* * *	
	512 - 608	585 - 610	512 - 608	512 - 608		
	* * *	* * *		* * *	* * *	

§ 2.106 Table of Frequency Allocations

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	608 - 614		608 - 614	608 - 614		
676 677A ~~680-684~~ 682 683 684 685	* * *		* * *	* * *		
686 686A 687 689 693 694		610 - 890				
		* * *				
	614 - 806		614 - 806	614 - 806		
	BROADCASTING Fixed Mobile			* * *	* * *	
790 - 862	675 692 692A 693					
FIXED BROADCASTING						
	806 - 890		806 - 902	806 - 821		
694 695 695A 696 697 ~~698-699-~~ 702	FIXED MOBILE BROADCASTING		* * *	* * *	* * *	
862 - 890						
FIXED MOBILE except aeronautical mobile BROADCASTING 703				821 - 824		
				* * *	* * *	
~~699-~~ 704	692A 700					
*	*		*	*	*	

§ 2.106 Table of Frequency Allocations

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
890 - 942	890 - 902	890 - 942		894 - 896		
* * *	FIXED MOBILE except aeronautical mobile Radiolocation	* * *		* * *	* * *	
				896 - 901		
				* * *	* * *	
				901 - 902		
	704A 705			* * *	* * *	
	902 - 928		902 - 928	902 - 928		
	FIXED Amateur Mobile except aeronautical mobile Radiolocation		* * *	* * *	* * *	* * *
	705 707 707A					
	928 - 942		928 - 932	928 - 929		
	* * *		* * *	* * *	* * *	
				929 - 932		
				* * *	* * *	

§ 2.106 Table of Frequency Allocations

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
			932 - 935	932 - 935		
			* * *	* * *	* * *	
			935 - 941	935 - 940		
			* * *	* * *	* * *	
				940 - 941		
				* * *	* * *	
			941 - 944	941 - 944		
942 - 960	942 - 960	942 - 960	* * *	* * *		
FIXED	* * *	* * *	944 - 960	944 - 960		
MOBILE except aeronautical mobile				* * *	* * *	
BROADCASTING 703						
699- 704						
*		*	*	*		*

§ 2.106 Table of Frequency Allocations

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1 215 - 1 240	RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-earth) 710 711 712 712A 713		1 215 - 1 240 * * *	1 215 - 1 240 * * *		
1 240 - 1 260	RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-earth) 710 711 712 712A 713 714		1 240 - 1 300 * * *	1 240 - 1 300 * * *	* * *	
1 260 - 1 300	RADIOLOCATION Amateur 664 711 712 712A 713 714					
*	*		*	*		*

§ 2.106 Table of Frequency Allocations

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1 429 - 1 525	1 429 - 1 525		1 429 - 1 435	1 429 - 1 435		
* * *	* * *		* * *	* * *	* * *	
			1 435 - 1 530	1 435 - 1 530		
1 525 - 1 530	1 525 - 1 530	1 525 - 1 530				
* * *	SPACE OPERATION (space-to-Earth) Earth Exploration-Satellite Fixed Mobile 723	* * *	* * *	* * *	* * *	
	722 723A					
1 530 - 1 533	1 530 - 1533		1530 - 1535	1530 - 1535		
SPACE OPERATION (space-to-Earth) MARITIME MOBILE-SATELLITE (space-to-Earth) Earth Exploration-Satellite Fixed Mobile except aeronautical mobile LAND MOBILE-SATELLITE (space-to-Earth)	SPACE OPERATION (space-to-Earth) MARITIME MOBILE-SATELLITE (space-to-Earth) Earth Exploration-Satellite Fixed Mobile 723 LAND MOBILE-SATELLITE (space-to-Earth)		MARITIME MOBILE SATELLITE (space-to-Earth) Mobile (aeronautical telemetering)	MARITIME MOBILE SATELLITE (space-to-Earth) Mobile (aeronautical telemetering)	* * *	
722 726 726A	722 726 726A					

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1 533 - 1 535	1 533 - 1 535					
SPACE OPERATION (space-to-Earth) MARITIME MOBILE-SATELLITE (space-to-Earth) Earth Exploration-Satellite Fixed Mobile except aeronautical mobile Land mobile-satellite (space-to-Earth) 726B	SPACE OPERATION (space-to-Earth) MARITIME MOBILE-SATELLITE (space-to-Earth) Earth Exploration-Satellite Fixed Mobile 723 Land mobile-satellite (space-to-Earth) 726B					
722 726 726A	722 726 726A		722 726A US78 US272	722 726A US78 US272		

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INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1 535 - 1 544 MARITIME MOBILE-SATELLITE (space-to-Earth) Land Mobile-Satellite (space-to-Earth) 726B 722 726A 727			1 535 - 1 544 MARITIME MOBILE-SATELLITE (space-to-Earth) 722 726A	1 535 - 1 544 MARITIME MOBILE SATELLITE (space-to-Earth) 722 726A	* * *	
1 544 - 1 545 MOBILE-SATELLITE (space-to-Earth) 722 727 727A ~~728~~-			1 544 - 1 545 MOBILE-SATELLITE (space-to-Earth) 722 727A ~~728~~-	1 544 - 1 545 MOBILE-SATELLITE (space-to-Earth) 722 727A ~~728~~-	* * *	
1 545 - 1 555 AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth) 722 726A 727 729 729A 730			1 545 - 1 549.5 AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth) Mobile-Satellite (space-to-Earth) 722 726A ~~729~~- US308 US309	1 545 - 1 549.5 AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth) Mobile-Satellite (space-to-Earth) 722 726A ~~729~~- US308 US309	* * *	

§ 2.106 Table of Frequency Allocations

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
			1549.5 - 1558.5 AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 722 726A ~~729~~ US308 US309	1549.5 - 1558.5 AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 722 726A ~~729~~ US308 US309	* * *	
1 555 - 1 559 LAND MOBILE-SATELLITE (space-to-Earth) 722 726A 727 730 730A			1558.5 - 1559 AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth) 722 726A ~~729~~ US308 US309	1558.5 - 1559 AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth) 722 726A ~~729~~ US308 US309	* * *	
1 559 - 1 610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) 722 727 730 731 731A 731B 731C 731D			1 559 - 1 610 AERONAUTICAL RADIONAVIGATION-SATELLITE (space-to-Earth) 722 ~~US39~~ US208 US260	1 559 - 1 610 AERONAUTICAL RADIONAVIGATION-SATELLITE (space-to-Earth) 722 ~~US39~~ US208 US260	* * *	

§ 2.106 Table of Frequency Allocations

§ 2.106 Table of Frequency Allocations

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1 610 - 1 626.5 AERONAUTICAL RADIONAVIGATION 722 727 730 731 731A 731B 731D 732 733 733A 733B 733E 733F 734	1 610 - 1 626.5 AERONAUTICAL RADIONAVIGATION RADIODETERMINAT-ION-SATELLITE (Earth-to-space) 733A* 722 ~~727--730~~ 731B 731C 732 733 733C 733D 734	1 610 - 1 626.5 AERONAUTICAL RADIONAVIGATION Radiodeterminat-ion-satellite (Earth-to-space) 733A* 733E* 722 727 730 731B 731C 732 733 733B 734	1 610 - 1626.5 AERONAUTICAL RADIONAVIGATION 722 732 733 734 ~~US39~~- US208 US260 US306	1 610 - 1626.5 AERONAUTICAL RADIONAVIGATION 722 732 733 734 ~~US39~~- US208 US260 US306	AVIATION (87). SATELLITE COMMUNICATION (25).	

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* The Final Acts of the 1987 Mobile WARC regarding the footnotes 734A and 734E for the 1610-1626.5 MHz band appears incorrect. Footnote 734A refers to the 1631.5-1634.5 MHz and 1656.5-1660 MHz bands and footnote 734E does not exist. A review of the footnotes contained in the Final Acts indicates that footnotes 733A and 733E may be the appropriate substitutions. Therefore, footnote 733A has been substituted for 734A in Regions 2 and 3. Because footnote 733E applies to Regions 1 and 3 only, footnote 734E has been deleted from Region 2 and footnote 733E has been subtituted for 734E in Region 3. The ITU will be contacted about these footnotes.

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INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1 626.5 - 1 631.5			1626.5 - 1645.5	1626.5 - 1645.5		
	MARITIME MOBILE-SATELLITE (Earth-to-space) Land mobile-satellite 726B (Earth-to-space)		MARITIME MOBILE-SATELLITE (Earth-to-space)	MARITIME MOBILE-SATELLITE (Earth-to-space)	* * *	
	722 726A 727 730					
1 631.5 - 1 634.5						
	MARITIME MOBILE-SATELLITE (Earth-to-space) LAND MOBILE-SATELLITE (Earth-to-space)					
	722 726A 727 730 734A					
1 634.5 - 1645.5						
	MARITIME MOBILE-SATELLITE (Earth-to-space) * Land mobile-satellite 726B (Earth-to-space)					
	722 726A 727 730		722 726A US39-	722 726A US39-		

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INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1 645.5 - 1 646.5			1645.5 - 1646.5	1645.5 - 1646.5		
	MOBILE-SATELLITE (Earth-to-space)		MOBILE-SATELLITE (Earth-to-space)	MOBILE-SATELLITE (Earth-to-space)	* * *	
	722 ~~728~~ 734B		722 ~~728 US39~~ 734B	722 ~~728 US39~~ 734B		
1 646.5 - 1 656.5			1646.5 - 1651	1646.5 - 1651		
	AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to space)		AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space) Mobile-Satellite (Earth-to-space)	AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space) Mobile-Satellite (Earth-to-space)	* * *	
	722 726A 727 729A 730 735		722 726A ~~735 US39~~ US308 US309	722 726A ~~735 US39~~ US308 US309		

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INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
			1651 - 1660	1651 - 1660		
1 656.5 - 1 660			AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space) MOBILE-SATELLITE (Earth-to-space)	AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space) MOBILE-SATELLITE (Earth-to-space)	* * *	
LAND MOBILE-SATELLITE (Earth-to-space)						
722 726A 727 730 730A 734A			722 726A ~~735~~ ~~US39~~ US308 US309	722 726A ~~735~~ ~~US39~~ US308 US309		
1 660 - 1 660.5			1660 - 1660.5	1660 - 1660.5		
~~AERONAUTICAL MOBILE-SATELLITE (R)~~ LAND MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY			AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space) RADIO ASTRONOMY	AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space) RADIO ASTRONOMY	* * *	
722 ~~735~~ 726A 730A 736			722 726A ~~735~~ 736 ~~US308~~ US309	722 726A ~~735~~ 736 ~~US308~~ US309		
*	*		*	*		*

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§ 2.106 Table of Frequency Allocations

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1 700 - 1 710	1 700 - 1 710		1 700 - 1 710	1 700 - 1 710		
FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) Mobile except aeronautical mobile 671 722 743A	* * *		* * *	* * *		
1 710 - 2 290	1 710 - 2 290		1 710 - 1 850	1 710 - 1 850		
FIXED Mobile 722 743A 744 746 747 748 750	* * *		* * *	* * *		
			1 850 - 1 990	1 850 - 1 990		
			* * *	* * *	* * *	
			1 990 - 2 110	1 990 - 2 200		
			* * *	MOBILE Fixed	* * *	
			2 110 - 2 200			
			* * *	US90 US111 US219 US222 NG23 NG118		

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INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
			2 200 - 2 290	2 200 - 2 290		
			* * *	* * *		
2 290 - 2 300	2 290 - 2 300		2 290 - 2 300	2 290 - 2 300		
FIXED	* * *		* * *	* * *		
SPACE RESEARCH (space-to-Earth) (deep space)						
Mobile except aeronautical mobile						
743A						

INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
2 300 - 2 450	2 300 - 2 450		2 300 - 2 310	2 300 - 2 310		
FIXED	* * *		* * *	* * *	* * *	
Amateur						
Mobile			2 310 - 2 390	2 310 - 2 390		
Radiolocation			* * *	* * *		
			2 390 - 2 450	2 390 - 2450		
664 743A 752			* * *	* * *	* * *	
2 450 - 2 483.5	2 450 - 2 483.5		2 450 - 2483.5	2 450 - 2483.5		
FIXED	FIXED		* * *	* * *		
MOBILE	MOBILE					
Radiolocation	RADIOLOCATION					
752 753	752					
2 483.5 - 2 500	2 483.5 - 2 500	2 483.5 - 2 500	2 483.5 - 2 500	2 483.5 - 2 500		
FIXED	FIXED	FIXED		RADIODETERMIN-	SATELLITE	
MOBILE	MOBILE	MOBILE		ATION-SATELLITE	COMMUNICATION	
Radiolocation	RADIODETERMINATI-	RADIOLOCATION		(space-to-Earth)	(25).	
	ON-SATELLITE 753A	Radiodeterminat-				
	(space-to-Earth)	ion-satellite				
	RADIOLOCATION	(space-to-Earth)				
733F 752 753A		753A				
753B 753C 753E	752 753D	752 753C	752 US41	752 US41 NG147		

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INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
2 500 - 2 655	2 500 - 2 655	2 500 - 2 535	2 500 - 2 655	2 500 - 2 655		
* * *	* * *	FIXED 762 764 FIXED-SATELLITE (space-to-Earth) 761 MOBILE except aeronautical mobile BROADCASTING-SATELLITE 757 760 754 754A	* * *	* * *		
		2 535 - 2 655				
		* * *				
*		*	*	*		*

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INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
2 900 - 3 100			2 900 - 3 100	2 900 - 3 100		
RADIONAVIGATION 773 ~~774--775-~~ Radiolocation			MARITIME RADIONAVIGATION ~~772-774-775-~~ Radiolocation 775A	MARITIME RADIONAVIGATION ~~772-774-775-~~ Radiolocation 775A	* * *	
772 775A			US44 G56	US44		
3 100 - 3 300			3 100 - 3 300	3 100 - 3 300		
RADIOLOCATION			RADIOLOCATION	RADIOLOCATION		
713 ~~776-~~ 777 778			713 ~~776-~~ 778 US110 G59	713 ~~776-~~ 778 US110		
*	*		*	*		*

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INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
5 000 - 5 250			5 000 - 5 250	5 000 - 5 250		
AERONAUTICAL RADIONAVIGATION			AERONAUTICAL RADIONAVIGATION	AERONAUTICAL RADIONAVIGATION	AVIATION (87). SATELLITE COMMUNICATION (25).	
733 796 797 797A 797B			733 796 797 797A US211 US260 US307	733 796 797 797A US211 US260 US307		
*	*		*	*		*
5 470 - 5 650			5 470 - 5 600	5 470 - 5 600		
MARITIME RADIONAVIGATION ~~772~~- Radiolocation			MARITIME RADIONAVIGATION Radiolocation ~~772~~-	MARITIME RADIONAVIGATION Radiolocation ~~772~~-	* * *	
			US50 US65 G56	US50 US65		
			5 600 - 5 650	5 600 - 5 650		
			* * *	* * *	* * *	
800 801 802						
*	*		*	*		*

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INTERNATIONAL TABLE			UNITED STATES TABLE		FCC USE DESIGNATORS	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	GOVERNMENT Allocation MHz	NON-GOVERNMENT Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
9 200- 9 300			9 200 - 9 300	9 200 - 9 300		
RADIOLOCATION MARITIME RADIONAVIGATION ~~772~~- 823 824 824A			MARITIME RADIONAVIGATION Radiolocation US110 G59 ~~772~~- 823 824A	MARITIME RADIONAVIGATION Radiolocation US110 ~~772~~- 823 824A		
9 300 - 9 500			9 300 - 9 500	9 300 - 9 500		
RADIONAVIGATION ~~774--775~~- 825A Radiolocation 775A 824A 825			RADIONAVIGATION ~~774--775~~- 825A Meteorological Aids Radiolocation 775A 824A US51 US66 US67 US71 G56	RADIONAVIGATION ~~774--775~~- 825A Meteorological Aids Radiolocation 775A 824A US51 US66 US67 US71		

* * * * *

448 The use of the bands 14 - 19.95 kHz, 20.05 - 70 kHz and 70 - 90 kHz (72 - 84 kHz and 86 - 90 kHz in Region 1) by the maritime mobile service is limited to coast radiotelegraph stations (A1A and F1B only). Exceptionally, the use of class J2B or J7B emissions is authorized subject to the necessary bandwidth not exceeding that normally used for class A1A or F1B emissions in the band concerned.

451 In the bands 70 - 90 kHz (70 - 86 kHz in Region 1) and 110 - 130 kHz (112 - 130 kHz in Region 1), pulsed radionavigation systems may be used on condition that they do not cause harmful interference to other services to which these bands are allocated.

453A In the band 90 - 110 kHz, the United Kingdom may continue to use its coast radiotelegraph stations in operation on 14 September 1987, on a secondary basis.

458 delete... footnote.

464A In Region 1, the change of the band limit from 285 kHz to 283.5 kHz shall take place on 1 February 1990 (see Resolution 500).

466A Additional Allocation: in Region 1, the frequency band 285.3 - 285.7 kHz is also allocated to the maritime radionavigation service (other than radiobeacons) on a permitted basis.

469 Different category of service: in Afghanistan, Australia, China, the Overseas French Territories of Region 3, India, Indonesia, the Islamic Republic of Iran, Japan, Pakistan, Papua New Guinea and Sri Lanka, the allocation of the band 415 - 495 kHz to the aeronautical radionavigation service is on a permitted basis. Administrations in these countries shall take all practical steps necessary to ensure that aeronautical radionavigation stations in the band 435 - 495 kHz do not cause interference to reception by coast stations of ship stations transmitting on frequencies designated for ship stations on a world-wide basis (see No. 4237).

469A Different category of service: in Cuba, the United States of America, and Mexico the allocation of the band 415 - 435 kHz to the aeronautical radionavigation service is on a primary basis.

470A In Region 2, the use of the band 435 - 495 kHz by the aeronautical radionavigation service is limited to non-directional beacons not employing voice transmission.

471 The bands 490 - 495 kHz and 505 - 510 kHz shall be subject to the provision of No. 3018 until the entry into force of the reduced guardband in accordance with Resolution 210 (Mob-87).

472 The frequency 500 kHz is an international distress and calling frequency for Morse radiotelegraphy. The conditions for its use are prescribed in Articles 37, 38, N 38 and 60.

472A In the maritime mobile service, the frequency 490 kHz is, from the date of full implementation of the GMDSS (see Resolution 331 (Mob-87)), to be used exclusively for the transmission by coast stations of navigational and meteorological warnings and urgent information to ships, by means of narrow-band direct-printing telegraphy. The conditions for use of the frequency 490 kHz are prescribed in Articles N 38 and 60, and Resolution 329 (Mob-87). In using the band 415 - 495 kHz for the aeronautical radionavigation service, administrations are requested to ensure that no harmful interference is caused to the frequency 490 kHz.

473 delete... footnote.

474 The conditions for the use of frequency 518 kHz by the maritime mobile service are prescribed in Articles 38, N 38 and 60 (see Resolution 324 (Mob-87) and Article 14A).

480A In the band 1605-1705 kHz, in cases where a broadcasting station of Region 2 is concerned, the service area of the maritime mobile stations in Region 1 shall be limited to that provided by ground-wave propagation.

489 In Region 3, the Loran system operates either on 1 850 kHz or 1 950 kHz, the bands occupied being 1 825 - 1 875 kHz and 1 925 - 1 975 kHz respectively. Other services to which the band 1 800 - 2 000 kHz is allocated may use any frequency therein on condition that no harmful interference is caused to the Loran system operating on 1 850 kHz or 1 950 kHz.

497 In Region 2, except in Greenland, coast stations and ship stations using radiotelephony in the band 2 065 - 2 107 kHz shall be limited to class R3E or J3E emission and to a peak envelope power not exceeding 1 kW. Preferably, the following carrier frequencies should be used: 2 065.0 kHz, 2 079.0 kHz, 2 082.5 kHz, 2 086.0 kHz, 2 093.0 kHz, 2 096.5 kHz, 2 100.0 kHz and 2 103.5 kHz. In Argentina, Brazil and Uruguay, the carrier frequencies 2 068.5 kHz and 2 075.5 kHz are also used for this purpose, while the frequencies within the band 2 072 - 2 075.5 kHz are used as provided in No. 4323 BD.

500A The frequencies 2 187.5 kHz, 4 188 kHz, 6 282 kHz, 8 375 kHz, 12 563 kHz and 16 750 kHz are international distress frequencies for digital selective calling. The conditions for the use of these frequencies are prescribed in Article 38.

Note: Effective July 1, 1991, the footnote 500A will read as follows:
The frequencies 2 187.5 kHz, 4 207.5 kHz, 6 312 kHz, 8 414.5 kHz, 12 577 kHz and 16 804.5 kHz are international distress frequencies for digital selective calling. The conditions for the use of these frequencies are prescribed in Article N 38.

500B The frequencies 2 174.5 kHz, 4 177.5 kHz, 6 268 kHz, 8 357.5 kHz, 12 520 kHz and 16 675 kHz are international distress frequencies for narrowband direct-printing telegraphy. The conditions for the use of these frequencies are prescribed in Article 38.

Note: Effective July 1, 1991, the footnote 500B will read as follows:
The frequencies 2 174.5 kHz, 4 177.5 kHz, 6 268 kHz, 8 376.5 kHz, 12 520 kHz and 16 695 kHz are international distress frequencies for narrow-band direct-printing telegraphy. The conditions for the use of these frequencies are prescribed in Article N 38.

554 Additional allocation: in Albania, the Federal Republic of Germany, Austria, Belgium, Bulgaria, Cote d'Ivoire, Denmark, Spain, Finland, France, Gabon, Greece, Ireland, Israel, Italy, Jordan, Lebanon, Lybia, Liechtenstein, Luxembourg, Madagascar, Mali, Malta, Morocco, Mauritania, Monaco, Nigeria, Norway, the Netherlands, Poland, the German Democratic Republic, the United Kingdom, Senegal, Sweden, Switzerland, Swaziland, Syria, Togo, Tunisia, Turkey and Yugoslavia, the band 47 - 68 MHz and in Romania, the band 47-58 MHz, are also allocated to the land mobile service on a permitted basis. However, stations of the land mobile service in the countries mentioned in connection with each band referred to in this footnote shall not cause harmful interference to, or claim protection from, existing or planned broadcasting stations of countries other than those mentioned in connection with the band.

572A Additional allocation: in Afghanistan, the Federal Republic of Germany, Austria, Belgium, Cyprus, Denmark, Egypt, Spain, France, Greece, Israel, Italy, Japan, Jordan, Lebanon, Malta, Morocco, Monaco, Norway, the Netherlands, Portugal, the United Kingdom, Sweden, Switzerland, Syria and Turkey, the band 74.8 - 75.2 MHz is also allocated to the mobile service on a secondary basis subject to agreement obtained under the procedure set forth in Article 14. In order to ensure that harmful interference is not caused to stations of the aeronautical radionavigation service, stations of the mobile service shall not be introduced in the band until it is no longer required for the aeronautical radionavigation service by any administration which may be identified in the application of Article 14.

583 delete... footnote.

587 Additional allocation: in Austria, Bulgaria, Hungary, Israel, Kenya, Mongolia, Poland, Syria, the German Democratic Republic, the United Kingdom, Somalia, Czechoslovakia, Turkey and the USSR, the band 104 - 108 MHz is also allocated to the mobile, except aeronautical mobile (R), service on a permitted basis until 31 December 1995 and, thereafter, on a secondary basis.

589 Additional allocation: in France, Romania, Sweden and Yugoslavia, the band 104 - 108 MHz is also allocated to the mobile, except aeronautical mobile (R), service on a permitted basis until 31 December 1995.

590 delete... footnote.

590A Additional allocation: in Afghanistan, the Federal Republic of Germany, Austria, Cyprus, Denmark, Egypt, Spain, France, Israel, Italy, Japan, Jordan, Lebanon, Malta, Morocco, Monaco, Norway, Pakistan, Portugal, the United Kingdom, Sweden, Switzerland, Syria and Turkey, the band 108 - 111.975 MHz is also allocated to the mobile service on a secondary basis subject to agreement obtained under the procedure set forth in Article 14. In order to ensure that harmful interference is not caused to stations of the aeronautical radionavigation service, stations of the mobile service shall not be introduced in the band until it is no longer required for the aeronautical radionavigation service by any administrations which may be identified in the application of Article 14.

593 In the band 117.975 - 136 MHz, the frequency 121.5 MHz is the aeronautical emergency frequency and, where required, the frequency 123.1 MHz is the aeronautical frequency auxiliary to communicate on these frequencies under the conditions laid down in Articles 38 and N38 for distress and safety purposes with stations of the aeronautical mobile service.

594A Different category of service: as from 1 January 1990, in Bulgaria, Poland, German Democratic Republic, Romania, Czechoslovakia, Turkey and the USSR, the allocation of the band 136 - 137 MHz to the aeronautical mobile (OR) service is on a permitted basis.

595 Until 1 January 1990, the band 136 - 137 MHz is also allocated to the space operation service (space-to-Earth), meterological-satellite service (space-to-Earth) and the space research service (space-to-Earth) on a primary basis. The introduction of stations of the aeronautical mobile (R) service shall only occur after that date. After 1 January 1990, the band 136 - 137 MHz will also be allocated to the above-mentioned space radiocommunication services on a secondary basis (see Resolution 408 (Mob-87).

609A Recognizing that the use of the band 149.9 - 150.05 MHz by the fixed and mobile services may cause harmful interference to the radionavigation-satellite service, administrations are urged not to authorize such use in application No. 342.

613 The frequency 156.8 MHz is the international distress, safety and calling frequency for the maritime mobile VHF radiotelephone service. The conditions for the use of this frequency are contained in Articles 38 and N 38.

In the bands 156 - 156.7625 MHz, 156.8375 - 157.45 MHz, 160.6 - 160.975 MHz and 161.475 - 162.05 MHz, each administration shall give priority to the maritime mobile service on only such frequencies as are assigned to stations of the maritime mobile service by the administration (see Articles 38, N 38 and 60).

Any use of frequencies in these bands by station of other services to which they are allocated should be avoided in areas where such use might cause harmful interference to the maritime mobile VHF radiocommunication service.

However, the frequency 156.8 MHz and the frequency bands in which priority is given to the maritime mobile service may be used for radiocommunications on inland waterways subject to agreement between interested and affected administrations and taking into account current frequency usage and existing agreements.

613A In the maritime mobile VHF service the frequency 156.525 MHz is to be used exclusively for digital selective calling for distress, safety and calling (see Resolution 323 (Mob-87)). The conditions for the use of this frequency are prescribed in Articles 38, N 38 and 60 and in Appendix 18.

613B Additional allocation: in Ireland and in the United Kingdom, the band 161.3875 - 161.4125 MHz is also allocated to the maritime radionavigation service on a primary basis, subject to agreement obtained under the procedure set forth in Article 14.

621 Additional allocation: in the Federal Republic of Germany, Austria, Belgium, Denmark, Spain, Finland, France, Israel, Italy, Liechtenstein, Monaco, Norway, the Netherlands, the United Kingdom, Sweden, Switzerland and Yemen (P.D.R. of), the band 174 - 223 MHz is also allocated to the land mobile service on a permitted basis. However, the stations of the land mobile service shall not cause harmful interference to, nor claim protection from, broadcasting stations, existing or planned, in countries other than those listed in this footnote.

627A Additional allocation: in Canada, the band 216 - 220 MHz is also allocated to the land mobile service on a primary basis.

642 The frequency 243 MHz is the frequency in this band for use by survival craft stations and equipment used for survival purposes (see Article 38).

645A Additional allocation: In Afghanistan, the Federal Republic of Germany, Austria, Belgium, Cyprus, Denmark, Egypt, Spain, France, Greece, Israel, Italy, Japan, Jordan, Malta, Morocco, Monaco, Norway, the Netherlands, Portugal, the United Kingdom, Sweden, Switzerland, Syria and Turkey, the band 328.6 - 335.4 MHz is also allocated to the mobile service on a secondary basis subject to agreement obtained under the procedure set forth in Article 14. In order to ensure that harmful interference is not caused to stations of the aeronautical radionavigation service, stations of the mobile service shall not be introduced in the band until it is no longer required for the aeronautical radionavigation service by any administration which may be identified in the application of Article 14.

645B Recognizing that the use of the band 399.9 - 400.05 MHz by the fixed and mobile service may cause harmful interference to the radionavigation satellite service, administrations are urged not to authorize such use in application of No. 342.

649 The use of the band 406 - 406.1 MHz by the mobile-satellite service is limited to low power satellite emergency position-indicating radiobeacons (see also Articles 38 and N 38).

649A Any emission capable of causing harmful interference to the authorized uses of the band 406 - 406.1 MHz is prohibited.

660A Additional allocation: in Mexico, the bands 430 - 435 MHz and 438 - 440 MHz are also allocated on a primary basis to the land mobile service, subject to agreement obtained under the procedure set forth in Article 14.

674 Different category of service: in Mexico and Venezuela, the allocation of the band 470 - 512 MHz to the fixed and mobile service, and in Argentina and Uruguay to the mobile service, is on a primary basis (see No. 425), subject to agreement obtained under the procedure set forth in Article 14.

677A Additional allocation: in the Federal Republic of Germany, Austria, Belgium, Cyprus, Denmark, Spain, Finland, France, Ireland, Israel, Italy, Libya, Malta, Morocco, Monaco, Norway, the Netherlands, Portugal, the United Kingdom, Sweden, Switzerland, Swaziland, Syria, Tunisia and Turkey, the band 470 - 790 MHz is also allocated on a secondary basis to the land mobile service, intended for applications ancillary to broadcasting. Stations of the land mobile service in the countries mentioned in this footnote, shall not cause harmful interference to existing or planned stations operating in accordance with the Table of Frequency Allocations in countries other than those listed in this footnote.

680 delete... footnote.

681 delete... footnote.

686A Additional allocation: in the United Kingdom, the band 598 - 606 MHz is also allocated to the aeronautical radionavigation service on a primary basis until 31 December 1994. All new assignments to stations in the aeronautical radionavigation service in this band are subject to the agreement of the Administrations of the following countries: the Federal Republic of Germany, Belgium, Denmark, Spain, France, Ireland, Luxembourg, Morocco, Norway and the Netherlands.

692A Additional allocation: in Cuba, the band 614 - 890 MHz is also allocated to the radionavigation service on a primary basis, subject to agreement obtained under the procedure set forth in Article 14.

695A Additional allocation: in Austria, Italy, the United Kingdom and Swaziland, the band 790 - 862 MHz is also allocated to the land mobile service on a secondary basis.

697 Additional allocation: In the Federal Republic of Germany, Denmark, Egypt, Finland, Israel, Kenya, Libya, Liechtenstein, Monaco, Norway, the Netherlands, Sweden, Switzerland and Yugoslavia, the band 790 - 830 MHz, and in these same countries and in Spain, France, Malta and Syria, the band 830 - 862 MHz, are also allocated to the mobile, except aeronautical mobile service in the countries mentioned in connection with each band referred to in this footnote shall not cause harmful interference, or claim protection from, stations of services operating in accordance with the Table in countries other than those mentioned in connection with the band.

698 delete... footnote.

699 delete... footnote.

700 Additional allocation: in Region 2, the band 806 - 890 MHz is also allocated to the mobile-satellite service on a primary basis. The use of this service is intended for operation within national boundaries and subject to agreement obtained under the procedure set forth in Article 14.

701 Additional allocation: in Region 3, the bands 806 - 890 MHz and 942 - 960 MHz are also allocated to the mobile-satellite, except aeronautical mobile-satellite (R), service on a primary basis. The use of this service is limited to operation within national boundaries and subject to agreement obtained under the procedure set forth in Article 14. In seeking such agreement, appropriate protection shall be afforded to services operating in accordance with the Table, to ensure that no harmful interference is caused to such services.

704A Additional allocation: in Brazil, Canada and the United States of America, the band 890 - 896 MHz is also allocated to the mobile-satellite service on a primary basis. The use of this service is intended for operation within national boundaries and subject to agreement obtained under the procedure set forth in Article 14. In seeking such agreement, appropriate protection shall be afforded to services operating in accordance with the Table.

707A Different category of service: in Chile, the band 903 - 905 MHz is allocated to the mobile, except aeronautical mobile, service on a primary basis and is subject to agreement obtained under the procedure set forth in Article 14.

712A Additional allocation: in Cuba, the band 1 215 - 1 300 MHz is also allocated to the radionavigation service on a primary basis subject to the agreement obtained under the procedure set forth in Article 14.

723A Different category of service: in Cuba, the band 1 525 - 1 530 MHz is allocated to the aeronautical mobile service on a primary basis, under the conditions specified in No. 723.

726A The bands 1 530 - 1 544 MHz, 1 545 - 1 559 MHz, 1 626.5 - 1 645.5 MHz and 1 646.5 - 1 660.5 MHz shall not be used for feeder links of any service. In exceptional circumstances, however, an earth station may be authorized by an administration to communicate via space stations using these bands.

726B The use of the bands 1 533 - 1 544, 1 626.5 - 1 631.5 and 1 634.5 - 1 645.5 MHz by the land mobile-satellite service is limited to non-speech low bit-rate data transmission.

727A The use of the band 1 544 - 1 545 MHz by the mobile-satellite service (space-to-earth) is limited to distress and safety communications (see Article N 38).

728 delete... footnote.

729 Transmissions in the band 1 545 - 1 555 MHz from terrestrial aeronautical stations directly to aircraft stations, or between aircraft stations, in the aeronautical mobile (R) service are also authorized when such transmissions are used to extend or supplement the satellite-to-aircraft links.

729A Notwithstanding any other provisions of the Radio Regulations relating to restrictions in the use of the bands allocated to the aeronautical mobile-satellite (R) service for public correspondence, the bands 1 545 - 1555 MHz and 1 646.5 - 1 656.5 MHz may be authorized by administrations for public correspondence with aircraft earth stations. Such communications must cease immediately, if necessary, to permit transmission of messages with priority 1 to 6 in Article 51.

730A In the bands 1 555 - 1559 and 1 656.5 - 1 660.5 MHz administrations may also authorize aircraft earth stations and ship earth stations to communicate with space stations in the land mobile-satellite service (see Resolution 208 (Mob-87)).

731 Alternative allocation: in Sweden, the band 1 590 - 1 626.5 MHz is allocated to the aeronautical radionavigation service on a primary basis.

731A In Region 1, stations of the aeronautical mobile service using the band 1 593 - 1 594 MHz and 1 625.5 - 1 626.5 MHz shall not claim protection from, or cause harmful interference to, stations of the aeronautical radionavigation and radionavigation satellite services, as applicable.

731B Additional allocation: the bands 1 593 - 1 594 MHz and 1 625.5 - 1 626.5 MHz are also allocated to the aeronautical mobile service in Region 1 (except in Syria and Tunisia) on a primary basis, and in Regions 2 and 3 (and in Syria and Tunisia) on a secondary basis. The use of these bands in the aeronautical mobile service is limited to public correspondence with aircraft (see Recommendation 408 (Mob-87)). The use of the band 1 593 - 1 594 MHz is limited to transmissions from aeronautical stations and the use of 1 625.5 - 1 626.5 MHz is limited to transmissions from aircraft stations.

731C Different category of service: the bands listed in No 731B are allocated, subject to agreement obtained in accordance with the procedures set forth in Article 14, to the aeronautical mobile service on a primary basis in Greenland, the French Overseas Territories in Regions 2 and 3, Bermuda, British Virgin Islands, Cayman Islands, Montserrat and Pitcairn Island (see Recommendation 408 (Mob-87)).

731D In Region 1, stations of the aeronautical mobile service using the bands 1 593 - 1 594 MHz and 1 625.5 - 1 626.5 MHz shall not cause harmful interference to stations of the fixed service operating in the countries listed in No. 730.

733A In respect of the radiodetermination-satellite service the provisions of No. 953 do not apply in the frequency band 1610 - 1626.5 MHz.

733B Different category of service: in Angola, Australia, Burundi, Cote d'Ivoire, Ethiopia, India, Islamic Republic of Iran, Israel, Italy, Jordan, Kenya, Lebanon, Liberia, Libya, Madagascar, Mali, Pakistan, Papua New Guinea, Senegal, Sudan, Swaziland, Syria, Tanzania, Thailand, Togo, Zaire and Zambia the allocation of the band 1 610 - 1 626.5 MHz to the radiodetermination-satellite service (Earth-to-space) is on a primary basis (see No. 425) subject to agreement obtained under the procedure set forth in Article 14 with other countries not listed in this provision.

733C Different category of service: in Venezuela, the allocation to the radiodetermination-satellite service in the band 1 610 - 1 626.5 MHz is allocated exclusively to the aeronautical radionavigation service on a primary basis.

733D Alternative allocation: in Cuba, the band 1 610 - 1 626.5 MHz is allocated exclusively to the aeronautical radionavigation service on a primary basis.

733E In Regions 1 and 3 harmful interference shall not be caused to stations of the radioastronomy service using the band 1 610.6 - 1 613.8 MHz by stations of the radiodetermination-satellite service.

733F In Region 1, the bands 1 610 - 1 626.5 MHz (Earth-to-space) and 2 483.5 - 2 500 MHz (space-to-Earth) are also allocated to the radiodetermination-satellite service on a secondary basis.

734A Land earth stations and ship earth stations in the mobile-satellite services operating in the bands 1 631.5 - 1 634.5 and 1 656.5 - 1 660 MHz shall not cause harmful interference to the stations in the fixed service operating as the countries listed in No. 730.

734B The use of the band 1 645.5 - 1 646.5 MHz by the mobile satellite service (Earth-to-space) and for intersatellite links is limited to distress and safety communications (see Article N 38).

735 Transmissions in the band 1 646.5 - 1656.5 MHz from aircraft stations in the aeronautical mobile (R) service directly to terrestrial aeronautical stations, or between aircraft stations, are also authorized when such transmissions are used to extend or supplement the aircraft-to-satellite links.

743A Different category of service: in the Federal Republic of Germany, Austria, Denmark, Finland, Israel, Norway, the Netherlands, the United Kingdom, Switzerland and Syria, in the band 1 700 - 2 450 MHz, in Sweden in the bands 1 700 - 1 710 MHz and 2 290 - 2450 MHz and in Yugoslavia in the band 2 300 - 2 450 MHz, the allocation to the land mobile service is on a primary basis (see No. 425), subject to agreement obtained under the procedure set forth in Article 14.

753 Alternative allocation: in France, the bands 2 450 - 2 483.5 MHz and 2 500 - 2 550 MHz are allocated on a primary basis to the radiolocation service and on a secondary basis to the fixed and mobile services (see Nos. 424 and 425). Such use in subject to agreement with the administrations having services operating or planned to operate in accordance with the Table which may be affected.

753A In respect of the radiodetermination-satellite service in the band 2483.5 - 2500 MHz, the provisions of No. 953 do not apply.

753B In Region 1, in countries other than those listed in No. 753C, harmful interference shall not be caused to, or protection shall not be claimed from, stations of the radiolocation service by stations of the radiodetermination-satellite service.

753C Different category of service: in Angola, Australia, Burundi, Cote d'Ivoire, Ethiopia, India, Islamic Republic of Iran, Israel, Italy, Jordan, Kenya, Lebanon, Liberia, Libya, Madagascar, Mali, Pakistan, Papua New Guinea, Senegal, Sudan, Swaziland, Syria, Tanzania, Thailand, Togo, Zaire and Zambia, the allocation of the band 2 483.5 - 2 500 MHz to the radiodetermination-satellite service (space-to-Earth) is on a primary basis (see No. 425) subject to agreement obtained under the procedure of Article 14 with other countries not listed in this provision.

753D Alternative allocation: in Cuba, the band 2 483.5 - 2500 MHz is allocated only to fixed, mobile and radiolocation services on a primary basis.

753E Alternative allocation: in France, the band 2 483.5 - 2 500 MHz is allocated on a primary basis to the radiolocation service and on a secondary basis to the mobile service (see Nos. 424 and 425). Such use is subject to agreement with the administrations having services operating or planned to operate in accordance with the Table which may be affected.

754A Additional allocation: subject to agreement obtained under the procedure set forth in Article 14, the band 2 500 - 2 516.5 MHz may also be used in India, the Islamic Republic of Iran, Papua New guinea and Thailand for the radiodetermination-satellite service (space-to-Earth) for operation limited to within national boundaries.

772 In the band 2 900 - 3 100 MHz, the use of the shipborne interrogator-transponder system (SIT) shall be confined to the sub-band 2 930 - 2 950 MHz.

774 delete... footnote.

775 delete... footnote.

775A In the bands 2 900 - 3 100 MHz and 9 300 - 9 500 MHz, the response from radar transponders shall not be capable of being confused with the response from radar beacons (racons) and shall not cause interference to ship or aeronautical radars in the radionavigation service, having regard, however, to No. 347 of these Regulations.

776 delete... footnote.

797A Additional allocation: in the countries listed in Nos. 733B and 753C, and subject to agreement obtained under the procedure set forth in Article 14, the band 5 150 - 5 216 MHz is also allocated to the radiodetermination-satellite service (space-to-Earth) on a primary basis. In Region 2, the band is also allocated to the radiodetermination-satellite service (space-to-Earth) on a primary basis. In Regions 1 and 3, except those countries listed in Nos. 733B and 753C, the band is also allocated to the radiodetermination-satellite service (space-to-Earth) on a secondary basis. The use by the radiodetermination-satellite service is limited to feeder links in conjunction with the radiodetermination-satellite service operating in the bands 1 610 - 1 626.5 MHz and/or 2 483.5 - 2 500 MHz. The total power flux-density at the Earth's surface shall in no case exceed -159 dBW/m^2 in any 4 kHz band for all angles of arrival.

797B Additional allocation: in the Federal Republic of Germany, Austria, Denmark, Spain, France, Finland, Israel, Italy, Jordan, Morocco, Norway, the Netherlands, Pakistan, the United Kingdom, Sweden, Switzerland, Syria and Tunisia, the band 5 150 - 5 250 MHz is also allocated to the mobile service, on a primary basis, subject to the agreement obtained under the procedure set forth in Article 14.

824A In the band 9 200 - 9 500 MHz, search and rescue transponders (SART) may be used, having due regard to the appropriate CCIR Recommendation (see also Article N 38).

825A In the band 9 300 - 9 320 MHz in the radionavigation service, the use of shipborne radars, other than those existing on 1 January 1976, is not permitted until 1 January 2001.

UNITED STATES (US) FOOTNOTES

US14 When 500 kHz is being used for distress purposes, ship and coast stations using morse telegraph may use 512 kHz for calling.

US39 delete... no longer applicable.

US82 Until July 1, 1991, the assignable frequencies in the bands 4143.6 - 4146.6 kHz, 6218.6 - 6224.6 kHz, 8291.1 - 8297.3 kHz, 12429.2 - 12439.5 kHz, 16587.1 - 16596.4 kHz and 22124 - 22139.5 kHz may be authorized on a shared nonpriority basis to Government and non-Government ship and coast stations (SSB telephony, with peak envelope power not to exceed 1 kW). Effective July 1, 1991, the assignable frequencies in the bands 4146 - 4152 kHz, 6224 - 6233 kHz, 8294 - 8300 kHz, 12353 - 12368 kHz, 16528 - 16549 kHz, 18825 - 18846 kHz, 22159 - 22180 kHz, and 25100 - 25121 kHz may be authorized on a shared non-priority basis to Government and non-Government ship and coast stations (SSB telephony, with peak envelope power not to exceed 1 kW).

US232 delete... replaced by MOD 474.

US235 Until implementation procedures and schedules are determined by future conferences of the International Telecommunications Union, the bands 9775 - 9900, 11650 - 11700, 11975 - 12050, 13600 - 13800, 15450 - 15600, 17550 - 17700, and 21750 - 21850 kHz, to be implemented by the broadcasting service are allocated as an alternative allocation to the fixed service. The bands 12230 - 12330, 16360 - 16460, 17360 - 17410, 18780 - 18900, 19680 - 19800, 22720 - 22855, 25110 - 25210, and 26100 - 26175 kHz to be implemented by the maritime mobile service are also allocated as an alternative allocation to the fixed service until July 1, 1991, when these bands are to be allocated exclusively to the maritime mobile service.

US236 Until implementation procedures and schedules are determined by future conferences of the International Telecommunications Union (See Resolution 319), the bands 4000 - 4063 and 8100 - 8195 kHz are also allocated on a primary basis to the fixed service.

US241 delete... no application has ever arisen.

US248 delete... the U.S. has implemented the re-accommodation actions of ITU Resolutions 8 and 9.

US249 delete... no longer applicable.

US280 delete... refers to the frequency 6147.5 kHz for use by other than broadcast. No longer being used.

US284 Until July 1, 1991, the carrier frequencies 6451.9 and 6455.0 kHz may be authorized to non-Government ship telephone and coast telephone stations operating in the Mississippi River maritime mobile service system on the condition that harmful interference will not be caused to services operating in accordance with the Table of Frequency Allocations and that any interference from such services must be accepted.

US285 Under exceptional circumstances, the carrier frequency 2635, 2638, and 2738 kHz may be authorized to coast stations.

US288 delete... this footnote is replaced by MOD 448.

US293 delete... time has passed on date mentioned.

US296 Until July 1, 1991, in the bands designated for ship wide-band telegraphy, facsimile and special transmission systems, the following assignable frequencies are available to non-Government stations on a shared basis with Government stations: 2070.5, 2072.5, 2074.5, 2076.5, 4160, 4168, 6238.6, 6242.6, 8326, 8341.5, 12485, 12489, 16654, 16658, 22186 and 22190 kHz. Effective July 1, 1991, in the bands designated for ship wide-band telegraphy,

facsimile and special transmission systems, the following assignable frequencies are available to non-Government stations on a shared basis with Government stations: 2070.5, 2072.5, 2074.5, 2076.5, 4154, 4170, 6235, 6259, 8302, 8338, 12370, 12418, 16551, 16615, 18848, 18868, 22182, 22238, 25123, and 25159 kHz.

US307 The sub-band 5150 - 5216 MHz is also allocated for space-to-Earth transmissions in the fixed satellite service for feeder links in conjunction with the radiodetermination satellite service operating in the bands 1610 - 1626.5 MHz and 2483.5 - 2500 MHz. The total power flux density at the earth's surface shall in no case exceed -159 dBW/m per 4 kHz for all angles of arrival.

US309 Transmissions in the bands 1 545 - 1 559 MHz from terrestrial aeronautical stations directly to aircraft stations, or between aircraft stations, in the aeronautical mobile (R) service are also authorized when such transmissions are used to extend or supplement the satellite-to-aircraft links. Transmissions in the band 1 646.5 - 1 660.5 MHz from aircraft stations in the aeronautical mobile (R) service directly to terrestrial aeronautical stations, or between aircraft stations, are also authorized when such transmissions are used to extend or supplement the aircraft-to-satellite links.

5. The authority citation for Part 25 continues to read as follows:

AUTHORITY: §§ 25.101 to 25.531 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. § 54. Interpret or apply Secs. 101-104, 76 Stat 419-427; 47 U.S.C. 701-744.

6. Section 25.201 would be amended by revising the definition for Radiodetermination-Satellite Service and adding the others in the correct alphabetical position to read as follows:

§ 25.201 Definitions.

Base Earth Station. An earth station in the fixed-satellite service or, in some cases, in the land mobile-satellite service, located at a specified fixed point or within a specified area on land to provide a feeder link for the land mobile-satellite service.(RR)

Land Earth Station. An earth station in the fixed-satellite service or, in some cases, in the mobile-satellite service, located at a specified fixed point or within a specified area on land to provide a feeder link for the mobile-satellite service.(RR)

Land Mobile Earth Station. A mobile earth station in the land mobile-satellite service capable of surface movement within the geographical limits of a country or continent.(RR)

Radiodetermination-Satellite Service. A radiocommunication service for the purpose of radiodetermination involving the use of one of more space stations. This service may also include feeder links necessary for its own operation.(RR)

7. In Section 25.202, paragraph (a)(2) would be revised to read as follows:

§ 25.202. Frequencies, frequency tolerance and emission limitations.

(a)(1) * * *

(2) The following frequencies are available for use by the Radiodetermination Satellite Service:

1610-1626.5 MHz: User-to-Satellite Link
2483.5-2500 MHz: Satellite-to-User Link

Fixed-Satellite service frequencies may be used for links between radiodetermination satellites and control centers, including the following designated bands, subject to the Rules in this subpart:

5150-5216 MHz: Satellite-to-Control Center Link
6525-6541.5 MHz: Control Center-to-Satellite Link

* * * * *

8. The authority citation for Part 80 would continue to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

9. The table of contents for Part 80, Subpart X would be amended by revising the center heading entitled "SATELLITE STATIONS" and the section heading of § 80.1185 to read as follows:

PART 80 -- STATIONS IN THE MARITIME SERVICES

* * * * *

Subpart X - Voluntary Radio Installations

* * * * *

MOBILE-SATELLITE STATIONS

80.1185 Supplemental eligibility for mobile-satellite stations.

* * * * *

10. Section 80.142 would be amended by revising paragraph (b) and removing paragraphs (b)(1) through (b)(9) to read as follows:

§ 80.142 Ships using radiotelegraphy.

* * * * *

(b) NB-DP operating procedure. The operation of NB-DP equipment in the maritime mobile service must be in accordance with the operating procedures contained in the latest version of CCIR Recommendation 492 that does not prevent the use of existing equipment.

* * * * *

11. Section 80.209 would be amended by revising the table paragraphs (a)(1)(i) and (ii), (a)(2)(i) and (ii), (a)(3)(i) and (ii) and the subsequent table footnotes as follows:

§ 80.209 Transmitter frequency tolerances.

(a) * * *

Frequency bands and categories of stations	Tolerances applicable until January 1, 1990, for transmitters installed before January 2, 1987	Tolerances applicable[1] to new transmitters installed after January 1, 1987, and to all transmitters after January 1, 1990
(1) Band 100-525 kHz:		
(i) Coast stations:		
For single sideband emissions.	20 Hz	20 Hz
For narrow-band direct-printing and data emissions.	10 Hz[5]	10 Hz[5]
For digital selective calling emissions.	10 Hz[2]	10 Hz[2]
For all other emissions	200	100
(ii) Ship stations:		
For transmitters with single sideband emission type accepted or type approved before November 30, 1977.	50 Hz	
For transmitters with other emissions type accepted or type approved before November 30, 1977.	1000	
For narrow-band direct-printing and data emissions.	10 Hz[5]	10 Hz[5]
For transmitters with digital selective calling emissions.	20 Hz[3]	10 Hz[3]
For all transmitters type accepted or type approved after November 29, 1977.	20 Hz	20 Hz

* * * * *

(2) Band 1600-4000 kHz:

(i) Coast stations and Alaska fixed stations:		
For single sideband and facsimile emissions.	20 Hz	20 Hz
For narrow-band direct-printing and data emissions.	10 Hz[5]	10 Hz[5]
For digital selective calling emissions.	15 Hz[2]	10 Hz[2]
For all other emissions	50	50
(ii) Ship stations:		
For transmitters with single sideband and facsimile emission type accepted or type approved before November 30, 1977.	50 Hz	
For transmitters with other emissions type accepted or type approved before November 30, 1977.	200	
For narrow-band direct-printing and data emissions.	10 Hz[5]	10 Hz[5]
For transmitters with digital selective calling emissions.	20 Hz[3]	10 Hz[3]
For all transmitters type accepted or type approved after November 29, 1977.	20 Hz	20 Hz

* * * * *

(3) Band 4000-27500 kHz:

(i) Coast stations and Alaska fixed stations:		
For single sideband and facsimile emissions.	20 Hz	20 Hz
For narrow-band direct-printing and data emissions.	10 Hz[5]	10 Hz[5]
For digital selective calling emissions.	15 Hz[2]	10 Hz[2]
For Morse telegraphy emissions.	15	10
For all other emissions	15	15
(ii) Ship stations:		
For transmitters with Morse telegraphy emission type accepted or type approved before November 30, 1977.	200 Hz	
For transmitters with other emissions type accepted or type approved before November 30, 1977.	50 Hz	
For narrow-band direct-printing and data emissions.	10 Hz[5]	10 Hz[5]
For transmitters with digital selective calling emissions.	20 Hz[3]	10 Hz[3]
For all other transmitters type accepted or type approved after November 29, 1977.	20 Hz	20 Hz

* * * * *

---

[1]Transmitters authorized prior to January 2, 1990, with frequency tolerances equal to or better than those required after this date will continue to be authorized in the maritime services provided they retain type acceptance and comply with the applicable standards in this part.

[2]Until January 1, 1990, the frequency tolerance for DSC coasts station transmitters in the MF and HF bands is 15 Hz. Thereafter, the frequency tolerance for DSC coast station transmitters in the MF and HF bands is 10 Hz.

[3]Until January 1, 1992, the frequency tolerance for DSC ship station transmitters in the MF and HF bands is 20 Hz. Thereafter, the frequency tolerance for DSC ship station transmitters in the MF and HF bands is 10 Hz.

[4]For transmitters in the radiolocation and associated telecommand service operating on 154.585 MHz, 159.480 MHz, 160.725 MHz, and 160.785 MHz the frequency tolerance is 15 parts in 10^6.

[5]Until January 1, 1992, the frequency tolerance for narrow-band direct-printing and data transmitters is 15 Hz for coast stations and 20 Hz for ship stations. The frequency tolerance for narrow-band direct-printing and data transmitters installed on or after January 1, 1992, is 10 Hz.

* * * * *

12. In Section 80.211, paragraph (a)(1) would be revised to read as follows:

§ 80.211 Emission limitations.

* * * * *

(a) * * *

(1) On any frequency removed from the assigned frequency by more than 50 percent up to and including 150 percent of the authorized bandwidth:

at least 25 dB for transmitters installed before February 1, 1992,
at least 28 dB for transmitters installed on or after February 1, 1992;

* * * * *

13. Section 80.215 would be amended by adding a new paragraph (d)(3) to read as follows:

§ 80.215 Transmitter power.

* * * * *

(d) * * *
(3) Digital selective calling:

All ships 415-526.5 kHz -- 400 W
All ships 1605-4000 kHz -- 400 W
All ships 4000-27500 kHz -- 1.5 kW

* * * * *

14. Section 80.219 would be amended by revising it in its entirety to read as follows:

§ 80.219 Special requirements for narrow-band direct-printing (NB-DP) equipment.

NB-DP and data transmission equipment installed in ship and coast stations before October 1, 1990, that operate on frequencies in the 4000-27500 kHz bands must conform to the technical requirements of CCIR Recommendations 476 or 625. Equipment newly installed on or after October 1, 1990, must conform to the technical requirements of CCIR Recommendation 625. Equipment installed before October 1, 1990, and built in accordance with CCIR Recommendation 476, however, may continue to be used.

15. In Section 80.359, paragraph (a) would be revised in its entirety to read as follows:

§ 80.359 Frequencies for digital selective calling (DSC).

(a) General purpose calling. The following tables describe the DSC frequencies that are assignable to ship and coast stations for general purpose calling using F1B or J2B emissions.

Ship Transmit
(in kHz unless otherwise noted)

458.5	8375.5	16751.0
2177.0[1]	12562.0	22248.0
2189.5	12562.5	22248.5
4187.5	16750.5	156.525 MHz
6281.5		

[1]The frequency 2177.0 kHz is available to ship stations for intership calling and acknowledgement of such calls only.

Coast Transmit
(in kHz unless otherwise noted)

455.5	8718.5	17232.5
2177.0	13100.0	22595.0
4357.0	13100.5	22595.5
6506.0	17232.0	156.525 MHz

* * * * *

16. Section 80.369 would be amended by revising paragraph (a) and adding new paragraphs (a)(1) and (2) to read as follows:

§ 80.369 Distress, urgency, safety, call and reply frequencies.

* * * * *

(a) In the 1605-3500 kHz band, the frequency 2182 is an international radiotelephony distress, urgency and safety frequency for ship stations, public and private coast stations, and survival craft stations. It is also used for call and reply by ship stations on a primary basis and by public coast stations on a secondary basis. The carrier frequency 2191 kHz may be used as a supplementary calling frequency in areas of heavy usage of 2182 kHz. All stations must use J3E emission when operating on 2182 and 2191 kHz, except that:

(1) H3E emission may be used on 2182 kHz for communications with foreign coast and ship stations; and,

(2) A3E emission may be used on 2182 kHz by portable survival craft stations, or transmitters authorized for use prior to January 1, 1972. See § 80.203(c).

* * * * *

17. In Section 80.379, paragraph (b)(5)(v) would be revised to read as follows:

§ 80.379 Maritime frequencies assignable to aircraft stations.

* * * * *

(b) * * *
(5) * * *

(v) Stations may use 156.800 MHz for distress and safety purposes at any altitude, and for general calling purposes at altitudes of 1,000 feet or less; and

* * * * *

18. Section 80.1185 would be amended by revising the center heading entitled "SATELLITE STATIONS" and its section heading to read as follows:

MOBILE-SATELLITE STATIONS

§ 80.1185 Supplemental eligibility for mobile-satellite stations.

* * * * *

19. The authority citation for Part 87 would continue to read as follows:

AUTHORITY: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-156, 301-609.

20. Section 87.5 would be amended by adding the following definitions in the correct alphabetical position:

§ 87.5 Definitions.

Aeronautical Mobile Off-Route (OR) Service. An aeronautical mobile service intended for communications, including those relating to flight coordination, primarily outside national or international civil air routes.(RR)

Aeronautical Mobile Route (R) Service. An aeronautical mobile service reserved for communications relating to safety and regularity of flight, primarily along national or international civil air routes.(RR)

Aeronautical Mobile-Satellite Off-Route (OR) Service. An aeronautical mobile-satellite service intended for communications, including those relating to flight coordination, primarily outside national and international civil air routes.(RR)

Aeronautical Mobile-Satellite Route (R) Service. An aeronautical mobile-satellite service reserved for communications relating to safety and regularity of flights, primarily along national or international civil air routes.(RR)

21. In Section 87.187, paragraphs (l)(3), (o), and (x) would be revised to read as follows:

§ 87.187 Frequencies.

* * * * *

(l) * * *

(3) The frequency 156.300 MHz may be used for safety purposes only. The frequency 156.800 MHz may be used for distress and safety purposes at any altitude, and for general calling purposes at altitudes of 1,000 feet or less.

* * * * *

(o) The frequency band 1435-1535 MHz is available for telemetering and telecommand associated with the flight testing of aircraft, missiles, or related major components. This includes launching into space, reentry into the earth's atmosphere and incidental orbiting prior to reentry. The

following frequencies are shared with flight telemetering mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, 1524.5 and 1525.5 MHz. See 87.303(d).

* * * * *

(x) Frequencies for public correspondence between ships and public coast stations in the maritime mobile service (except frequencies in the 156-174 MHz band) and coast earth stations in the maritime mobile-satellite service are available for public correspondence between aircraft and public coast stations and coast earth stations, respectively. The transmission of public correspondence from aircraft must not cause interference to maritime communications.

* * * * *

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-182

In the Matter of

Automated Reporting Requirements
for Certain Class A and Tier 1
Telephone Companies (Parts 31,
43, 67, and 69 of the FCC's Rules)

ORDER

Adopted: May 4, 1989; Released: May 11, 1989

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In the *ARMIS Reconsideration Order*,[1] the Commission decided that the automated system of reports[2] established in this proceeding required certain revisions. The Commission directed the Common Carrier Bureau to make these revisions, and delegated authority to the Bureau to resolve a number of technical issues concerning the design and format of the reporting forms and to issue corrected forms. On January 6, 1989, the Bureau released three orders which revised the Quarterly Report, the USOA Report, and the Joint Cost Report consistent with the *ARMIS Reconsideration Order*. In this *Order*, we are revising the Access Report to implement revisions required by the *ARMIS Reconsideration Order* and to make necessary technical changes. The revised Access Report including technical specifications are contained in the Appendix. The Appendix is available for inspection and copying during normal business hours in the Accounting and Audits Division, Room 812, 2000 L Street, N.W., Washington, D.C. Copies may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street N.W., Suite 140, Washington, D.C. 20037, (202) 857-3800.

II. THE REVISED REPORT

2. The *ARMIS Reconsideration Order* required that rate of return data be added to the Access Report for all columns except the "Subject to Separations" and "State" columns. In addition, the Access Report needs several additional columns to provide data for all access elements and subelements prescribed in Part 69, a section for "Equal Access" data as prescribed by Part 36, and additional rows to report the Parts 36 and 69 cost allocation factors used in the report. These changes will make the Access report consistent with the *ARMIS Reconsideration Order* and will provide information needed by the Bureau to analyze the data submitted by the carriers. All of these changes have been included in the revised report shown in the Appendix.

III. PAPERWORK REDUCTION ACT

3. The Office of Management and Budget has approved the collection of information requirement contained in this rule. The OMB control number for this collection of information requirement is 3060-0395.

IV. ORDERING CLAUSE

4. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201-205, 215, 219, and 220 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j) 201-205, 215, 219, and 220, that the form IS ADOPTED, and that the modifications herein ARE ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), *Order on Reconsideration*, 3 FCC Rcd 6375 (1988) (*ARMIS Reconsideration Order*).

[2] The automated system of reports consists of four reports: The Quarterly Report, which provides aggregate financial data reflecting the results of accounting and cost allocation requirements prescribed in Parts 32, 64, 36, and 69; The USOA Report, which shows data for every account in the Uniform System of Accounts; The Joint Cost Report, which shows allocations of costs between regulated and nonregulated activities as required by Part 64; and The Access Report, which shows the results of the jurisdictional separations and access charge rules as prescribed in Parts 36 and 69, respectively.

APPENDIX

This document provides the instructions for FCC Report 43-04, the ARMIS Access Report, which was adopted by the Commission in CC Docket No. 86-182. The instructions consist of the following five sections, which are attached:

1. Reporting Procedures - details on the specific procedures to be followed when submitting this report to the Commission.

2. Report Definition

   a. Summary - a description of the form and its reporting burden.

   b. Form - an illustration of the rows and columns to be reported.

   c. Certification - an illustration of the certification page.

   d. General Instructions - instructions including reporting and rounding conventions.

   e. Column Descriptions - descriptions of the columns to be reported.

   f. Row Instructions - instructions for completing the rows to be reported.

   g. Glossary - a glossary of the abbreviations used on the Report.

3. Automated Report Specifications - the detailed automated data processing (ADP) specifications for the automated report to be filed.

4. Paper Report Specifications - the page layout and detailed specifications for the paper report to be filed.

5. COSA Code Table - the list of four letter COSA codes (CO = Company, SA = Study Area).

A. Introduction

This document contains details on the specific procedures to be followed when submitting FCC Report 43-04, the ARMIS Access Report, to the Commission.

B. General Information

1. FCC Report 43-04 was adopted by the Commission in the ARMIS Order, Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), CC Docket No. 86-182, 2 FCC Rcd 5770 (1987). The report is prescribed for every local exchange carrier with operating revenues in excess of $100 million.

2. Affected carriers shall file the report by April 1 of each year for the previous calendar year, except for the initial report, which will be filed in August 1989 and will contain data for the calendar year 1988.

3. The report shall be filed on a study area (jurisdiction) basis.

4. Carriers seeking proprietary treatment for some data must provide two versions of each paper and automated report. The Confidential Version must contain all the required information (Confidential Treatment Tables/Data Records are provided to identify confidential data). The Public Version should not include data for which the carrier is seeking proprietary treatment. The carrier should **prominently** label the paper report and the diskette containing information subject to a claim of confidentiality to prevent inadvertent disclosure.

5. Carriers not seeking proprietary treatment for any data should provide only one version of each paper report and diskette, and the paper report and the diskette should be labeled the Unrestricted Version.

6. The Confidential Treatment Tables/Data Records must be included in all reports but are not a substitute for applying for confidential treatment with this Commission following established Commission procedures.

7. Each report and diskette must be clearly labeled to include the report number, company, study area, period, COSA code, version and submission number. The report number is 43-04, which identifies the filing as the ARMIS Access Report. The period identifies the year covered by the report. See the attached COSA Code Table (CO = Company, SA = Study Area) for a list of companies and their respective COSAs. The version refers to whether the filing is the Confidential, Public or Unrestricted Version. The submission number is defined as follows: Submission 0 is for test data purposes only. Submission 1 is the first submission of a year's data. Higher numbers (2, 3, etc.) should be used if needed for successive revisions to correct that year's submission.

8. All correspondence and pleadings shall identify the proceeding as CC Docket No. 86-182.

C. **Data Items That Are "Not Available" or Are "Withheld"**

1. The term "Not Available" is used below to refer only to those items that the Commission has ruled are not applicable to a particular row/column or are not required for a particular filing entity. The Confidential Version must contain values for all of the data items except those items that are "Not Available." If no data are applicable to a given field the carrier should enter zero. If, in addition to the required study area reports, a carrier submits a report that combines data for more than one study area, and this report includes a field such as a sum, a ratio, or a percentage that cannot be computed completely and accurately because it relies on another item that the Commission has ruled is a "Not Available" item, then that field is also considered to be "Not Available."

2. The term "Withheld" is used below to refer only to those items for which the carrier has applied for confidential treatment with the Commission and is only applicable to the Public Version. If a field such as a sum, a ratio or a percentage relies on an item or items that have been withheld and that field is not also withheld, then it must include the withheld amount. For example, a carrier could withhold the individual values for two of three numbers that are totaled. If the carrier does not also apply for confidential treatment for the total, then that total must be the sum of all three numbers, not just the one that was not withheld. The Public Version must contain values for all of the data items except those items which are "Not Available" or those items which have been "Withheld."

3. See paragraph C.5 in the attached Automated Report Specifications and paragraph C.2 in the attached Paper Report Specifications for data entry conventions for these items.

D. **Where to File**

1. Carriers submitting FCC Report 43-04 should consult the schedule below which details the number of copies required and the location to which those copies should be delivered.

2. Carriers are reminded that they must serve a copy of either the Unrestricted Version or the Public Version of both the paper report and the automated report (diskette) on the FCC's contractor for public records duplication, International Transcription Services, Inc., (ITS). These copies should be mailed to the attention of Wilbur Thomas of ITS at Suite 140, 2100 M Street, N.W., Washington, D.C. 20037 or delivered to ITS in Room 246 at FCC Headquarters, 1919 M Street, N.W., Washington, D.C. 20036.

NUMBER OF COPIES

FOR CARRIERS SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Confidential Paper Report	Confidential Automated Report (diskette)	Public Paper Report	Public Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-	-	-
FCC Common Carrier Bureau Accounting & Audits Division Room 812 2000 L Street, N.W. Washington, D.C. 20554	1	1	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	-	-	1	1

FOR CARRIERS NOT SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Unrestricted Paper Report	Unrestricted Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-
FCC Common Carrier Bureau Accounting & Audits Division Room 812 2000 L Street, N.W. Washington, D.C. 20554	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	1	1

E. Footnotes

1. If any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances not explained in a previous report, then include footnote text to explain the specific circumstances.

2. If the reporting carrier does not follow the procedures described in the row instructions as indicated on the reporting form, it must explain any deviations from those procedures in an explanatory footnote. Such footnotes must provide detailed explanations of the procedures actually used by the carrier and its specific reasons for deviating from the procedures prescribed by the Commission's rules.

3. Do not include explanatory footnotes in the transmittal letter. The footnote text must be included in the Footnote Text Records and the Footnote Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

F. Errata

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 43-04. Submissions containing corrected data must include references to indicate which data items were corrected since the previous submission.

2. These references must be included in the Erratum Records and the Erratum Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

G. Certification

1. Carriers must certify the accuracy of the data submitted in FCC Report 43-04 by including a signed certification statement as the last page of the paper report.

2. The text of the certification statement is included in the attached Report Definition.

H. Waivers

1. If a carrier determines that it will be unable to provide data required by FCC Report 43-04, it must file an application for waiver with the Commission following established Commission procedures. All such requests from a carrier should be included in a single application. The application must demonstrate good cause for reporting a different or lower level of detail and indicate how these deficiencies will be corrected.

2. Omission of individual data items or entries without a request for waiver is unacceptable. One reason that compliance with the full requirements is so important is that omission of any single data entry by any carrier will jeopardize the accuracy of aggregate industry information.

I. **Public Information**

1. The Public or Unrestricted Versions of the paper reports filed as Report 43-04 may be examined by the public from 9:00 to 11:00 a.m. and from 2:00 to 4:00 p.m., Monday through Friday, in Room 812, 2000 L Street, N.W., Washington, D.C.

2. Copies of the Public or Unrestricted Versions of the paper or automated reports filed as FCC Report 43-04 may be obtained from the FCC's contractor for public records duplication, ITS. Parties should contact Wilbur Thomas of ITS at (202) 857-3800.

For further information regarding these procedures, contact:

Adrianne Brent
FCC Common Carrier Bureau
Accounting & Audits Division
(202) 634-1861

Approved by OMB
3060-0395
Expires 10/31/90
Estimated Average Burden Hours Per Response: 115 hours

SUMMARY

This document provides the Report Definition for FCC Report 43-04, the ARMIS Access Report, and lists the jurisdictional separations and access charge data which must be provided annually for each study area. It contains the following:

Form - an illustration of the rows and columns to be reported.

Certification - an illustration of the certification page.

General Instructions - instructions including reporting and rounding conventions.

Column Descriptions - descriptions of the columns to be reported.

Row Instructions - instructions for completing the rows to be reported.

Glossary - a glossary of the abbreviations used on the Report.

NOTICE: The ARMIS Access Report collects the results of the jurisdictional separations and access charge procedures as specified in Parts 36 and 69 of the Commission's Rules. The ARMIS Access Report specifies information requirements in a consistent format and is essential to the FCC to monitor revenue requirements, joint cost allocations, jurisdictional separations, and access charges. Your response is mandatory.

Public reporting burden for this collection of information is estimated to average 115 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Federal Communications Commission, Office of Managing Director, Washington DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington DC 20503.

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	I. Equal Access							
	A. Property							
10	GSF 36				N/A	N/A	N/A	N/A
11	$EA MOU 36				N/A	N/A	N/A	N/A
12	EA COE Cat 2 36				N/A	N/A	N/A	N/A
13	$EA MOU 36				N/A	N/A	N/A	N/A
14	EA COE Cat 3 36				N/A	N/A	N/A	N/A
15	$EA MOU 36				N/A	N/A	N/A	N/A
16	EA Oth COE 36				N/A	N/A	N/A	N/A
17	$EA MOU 36				N/A	N/A	N/A	N/A
18	EA IOT 36				N/A	N/A	N/A	N/A
19	$EA MOU 36				N/A	N/A	N/A	N/A
20	EA C&WF 36				N/A	N/A	N/A	N/A
21	$EA MOU 36				N/A	N/A	N/A	N/A
22	Amort Ass 36				N/A	N/A	N/A	N/A
23	$EA MOU 36				N/A	N/A	N/A	N/A
24	Other Plant 36				N/A	N/A	N/A	N/A
25	$EA MOU 36				N/A	N/A	N/A	N/A
26	M&S 36				N/A	N/A	N/A	N/A
27	$EA MOU 36				N/A	N/A	N/A	N/A
28	CWC 36				N/A	N/A	N/A	N/A
29	$EA MOU 36				N/A	N/A	N/A	N/A
30	Total Property36				N/A	N/A	N/A	N/A
	B. Reserves and Deferrals							
40	Acc Depr 36				N/A	N/A	N/A	N/A
41	$EA MOU 36				N/A	N/A	N/A	N/A
42	Acc Amort 36				N/A	N/A	N/A	N/A
43	$EA MOU 36				N/A	N/A	N/A	N/A
44	Ct Def IncTax 36				N/A	N/A	N/A	N/A
45	$EA MOU 36				N/A	N/A	N/A	N/A
46	NoC Def IncTax36				N/A	N/A	N/A	N/A
47	$EA MOU 36				N/A	N/A	N/A	N/A
48	All Other-Net 36				N/A	N/A	N/A	N/A
49	$EA MOU 36				N/A	N/A	N/A	N/A
50	Tot Res & Def 36/69				N/A	N/A	N/A	N/A
51	Tot EA Inv 36/69				N/A	N/A	N/A	N/A

FCC REPORT 43-04 | Approved by OMB
ARMIS ACCESS REPORT | 3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx | xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx | SUBMISSION X
PERIOD: From mmm yyyy To mmm yyyy | TABLE I
COSA: xxxx | PAGE 1.2 OF 30.3

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	EqualAccess (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	I. Equal Access							
	A. Property							
10	GSF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
11	‡EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
12	EA COE Cat 2 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
13	‡EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
14	EA COE Cat 3 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
15	‡EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
16	EA Oth COE 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
17	‡EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
18	EA IOT 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
19	‡EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
20	EA C&WF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
21	‡EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
22	Amort Ass 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
23	‡EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
24	Other Plant 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
25	‡EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
26	M&S 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
27	‡EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
28	CWC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
29	‡EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
30	Total Property36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	B. Reserves and Deferrals							
40	Acc Depr 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
41	‡EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
42	Acc Amort 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
43	‡EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
44	Ct Def IncTax 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
45	‡EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
46	NoC Def IncTax36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
47	‡EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
48	All Other-Net 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
49	‡EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
50	Tot Res & Def 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
51	Tot EA Inv 36/69	N/A			N/A	N/A		N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	I. Equal Access			
	A. Property			
10	GSF 36	N/A	N/A	N/A
11	#EA MOU 36	N/A	N/A	N/A
12	EA COE Cat 2 36	N/A	N/A	N/A
13	#EA MOU 36	N/A	N/A	N/A
14	EA COE Cat 3 36	N/A	N/A	N/A
15	#EA MOU 36	N/A	N/A	N/A
16	EA Oth COE 36	N/A	N/A	N/A
17	#EA MOU 36	N/A	N/A	N/A
18	EA IOT 36	N/A	N/A	N/A
19	#EA MOU 36	N/A	N/A	N/A
20	EA C&WF 36	N/A	N/A	N/A
21	#EA MOU 36	N/A	N/A	N/A
22	Amort Ass 36	N/A	N/A	N/A
23	#EA MOU 36	N/A	N/A	N/A
24	Other Plant 36	N/A	N/A	N/A
25	#EA MOU 36	N/A	N/A	N/A
26	M&S 36	N/A	N/A	N/A
27	#EA MOU 36	N/A	N/A	N/A
28	CWC 36	N/A	N/A	N/A
29	#EA MOU 36	N/A	N/A	N/A
30	Total Property36	N/A	N/A	N/A
	B. Reserves and Deferrals			
40	Acc Depr 36	N/A	N/A	N/A
41	#EA MOU 36	N/A	N/A	N/A
42	Acc Amort 36	N/A	N/A	N/A
43	#EA MOU 36	N/A	N/A	N/A
44	Ct Def IncTax 36	N/A	N/A	N/A
45	#EA MOU 36	N/A	N/A	N/A
46	NoC Def IncTax36	N/A	N/A	N/A
47	#EA MOU 36	N/A	N/A	N/A
48	All Other-Net 36	N/A	N/A	N/A
49	#EA MOU 36	N/A	N/A	N/A
50	Tot Res & Def 36	N/A	N/A	N/A
51	Tot Ea Inv 36/69		N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	C. Operating Expenses							
60	GSF 36				N/A	N/A	N/A	N/A
61	#EA MOU 36				N/A	N/A	N/A	N/A
62	Network Supp 36				N/A	N/A	N/A	N/A
63	#EA MOU 36				N/A	N/A	N/A	N/A
64	CO Exp 36				N/A	N/A	N/A	N/A
65	#EA MOU 36				N/A	N/A	N/A	N/A
66	IOT Expenses 36				N/A	N/A	N/A	N/A
67	#EA MOU 36				N/A	N/A	N/A	N/A
68	C&WF Expenses 36				N/A	N/A	N/A	N/A
69	#EA MOU 36				N/A	N/A	N/A	N/A
70	Oth PP&E Exp 36				N/A	N/A	N/A	N/A
71	#EA MOU 36				N/A	N/A	N/A	N/A
72	Network Oper 36				N/A	N/A	N/A	N/A
73	#EA MOU 36				N/A	N/A	N/A	N/A
74	Access Exp 36				N/A	N/A	N/A	N/A
75	#EA MOU 36				N/A	N/A	N/A	N/A
76	Depr/Amort 36				N/A	N/A	N/A	N/A
77	#EA MOU 36				N/A	N/A	N/A	N/A
78	Marketing Exp 36				N/A	N/A	N/A	N/A
79	#EA MOU 36				N/A	N/A	N/A	N/A
80	Services Exp 36				N/A	N/A	N/A	N/A
81	#EA MOU 36				N/A	N/A	N/A	N/A
82	Corp Op Exp 36				N/A	N/A	N/A	N/A
83	#EA MOU 36				N/A	N/A	N/A	N/A
84	Tot Expenses 36/69				N/A	N/A	N/A	N/A
	D. Deferred Charges and Expense Amortization							
90	DChg Beg Bal 36		N/A	N/A	N/A	N/A	N/A	N/A
91	Additions 36		N/A	N/A	N/A	N/A	N/A	N/A
92	Deductions 36		N/A	N/A	N/A	N/A	N/A	N/A
93	Avg Balance for Yr		N/A	N/A	N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	C. Operating Expenses							
60	GSF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
61	#EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
62	Network Supp 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
63	#EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
64	CO Exp 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
65	#EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
66	IOT Exp 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
67	#EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
68	C&WF Exp 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
69	#EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
70	Oth PP&E Exp 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
71	#EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
72	Network Oper 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
73	#EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
74	Access Exp 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
75	#EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
76	Depr/Amort 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
77	#EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
78	Marketing Exp 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
79	#EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
80	Services Exp 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
81	#EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
82	Corp Op Exp 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
83	#EA MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
84	Tot Expenses 36/69	N/A			N/A	N/A		N/A
	D. Deferred Charges and Expense Amortization							
90	DChg Beg Bal 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
91	Additions 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
92	Deductions 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
93	Avg Balance forYr36	N/A	N/A	N/A	N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	C. Operating Expenses			
60	GSF 36	N/A	N/A	N/A
61	#EA MOU	N/A	N/A	N/A
62	Network Supp 36/69	N/A	N/A	N/A
63	#EA MOU 36	N/A	N/A	N/A
64	CO Exp 36	N/A	N/A	N/A
65	#EA MOU 36	N/A	N/A	N/A
66	IOT Expenses 36	N/A	N/A	N/A
67	#EA MOU 36	N/A	N/A	N/A
68	C&WF Expenses 36	N/A	N/A	N/A
69	#EA MOU 36	N/A	N/A	N/A
70	Oth PP&E Exp 36	N/A	N/A	N/A
71	#EA MOU 36	N/A	N/A	N/A
72	Network Oper 36	N/A	N/A	N/A
73	#EA MOU 36	N/A	N/A	N/A
74	Access Exp 36	N/A	N/A	N/A
75	#EA MOU 36	N/A	N/A	N/A
76	Depr/Amort 36	N/A	N/A	N/A
77	#EA MOU 36	N/A	N/A	N/A
78	Marketing Exp 36	N/A	N/A	N/A
79	#EA MOU 36	N/A	N/A	N/A
80	Services Exp 36	N/A	N/A	N/A
81	#EA MOU 36	N/A	N/A	N/A
82	Corp Op Exp 36	N/A	N/A	N/A
83	#EA MOU 36	N/A	N/A	N/A
84	Tot Expenses 36/69		N/A	N/A
	D. Deferred Charges and Expense Amortization			
90	DChg Beg Bal 36	N/A	N/A	N/A
91	Additions 36	N/A	N/A	N/A
92	Deductions 36	N/A	N/A	N/A
93	Avg Balance forYr36	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	II. Telecommunications Property							
	A. General Support Facilities (GSF)							
1000	GSF 36/69							N/A
1001	#Big 3 Exp Cls A 36				N/A	N/A	N/A	N/A
1002	#Inv Cls B 36				N/A	N/A	N/A	N/A
1003	#Inv 69	N/A	N/A					N/A
	B. Central Office Equipment (COE)							
	1. Category 1 COE - Operator Systems Equipment							
	a) Switchboards at Toll Centers							
1100	Separate Toll 36/69				N/A	N/A	N/A	N/A
1101	#WSWS 36				N/A	N/A	N/A	N/A
1102	Separate Lcl 36/69				N/A	N/A	N/A	N/A
1103	#WSWS 36				N/A	N/A	N/A	N/A
1104	Comb Lcl Toll 36/69				N/A	N/A	N/A	N/A
1105	#WSWS 36				N/A	N/A	N/A	N/A
1106	Comb Toll/DSA 36/69				N/A	N/A	N/A	N/A
1107	#WSWS 36				N/A	N/A	N/A	N/A
1108	Separate DSA 36/69				N/A	N/A	N/A	N/A
1109	#WSWS 36				N/A	N/A	N/A	N/A
1110	Separate DSB 36/69				N/A	N/A	N/A	N/A
1111	#WSWS 36				N/A	N/A	N/A	N/A
1112	Tot Toll Ctr 36/69				N/A	N/A	N/A	N/A
	b) Service Observing Boards							
1120	Joint SOB 36				N/A	N/A	N/A	N/A
1121	#Exchange SOU 36		N/A	N/A	N/A	N/A	N/A	N/A
1122	#Toll SOU 36		N/A	N/A	N/A	N/A	N/A	N/A
1123	Exchange 36			N/A	N/A	N/A	N/A	N/A
1124	Joint Toll 36				N/A	N/A	N/A	N/A
1125	Sep Toll SOB 36				N/A	N/A	N/A	N/A
1126	Tot Toll SOB 36/69				N/A	N/A	N/A	N/A
1127	#Toll MOU 36				N/A	N/A	N/A	N/A
1128	#COE 1,2 & 3 69	N/A	N/A		N/A	N/A	N/A	N/A
1129	Tot SOB 36/69				N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	II. Telecommunications Property							
	A. General Support Facilities (GSF)							
1000	GSF 36/69			N/A				
1001	#Big 3 Exp Cls A 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1002	#Inv Cls B 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1003	#Inv 69			N/A				
	B. Central Office Equipment (COE)							
	1. Category 1 COE - Operator Systems Equipment							
	a) Switchboards at Toll Centers							
1100	Separate Toll 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1101	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1102	Separate Lcl 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1103	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1104	Comb Lcl Toll 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1105	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1106	Comb Toll/DSA 36/69	N/A		N/A	N/A			N/A
1107	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1108	Separate DSA 36/69	N/A		N/A	N/A			N/A
1109	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1110	Separate DSB 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1111	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1112	Tot Toll Ctr 36/69	N/A		N/A	N/A			N/A
	b) Service Observing Boards							
1120	Joint SOB 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1121	#Exchange SOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1122	#Toll SOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1123	Exchange 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1124	Joint Toll 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1125	Sep Toll SOB 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1126	Tot Toll SOB 36/69	N/A		N/A				N/A
1127	#Toll MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1128	#COE 1,2 & 3 69	N/A		N/A				N/A
1129	Tot SOB 36/69	N/A		N/A				N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	II. Telecommunications Property			
	A. General Support Facilities (GSF)			
1000	GSF 36/69			
1001	#Big 3 Exp Cls A 36	N/A	N/A	N/A
1002	#Inv Cls B 36	N/A	N/A	N/A
1003	#Inv 69			
	B. Central Office Equipment (COE)			
	1. Category 1 COE - Operator Systems Equipment			
	a) Switchboards at Toll Centers			
1100	Separate Toll 36/69	N/A	N/A	
1101	#WSWS 36	N/A	N/A	N/A
1102	Separate Lcl 36/69	N/A	N/A	
1103	#WSWS 36	N/A	N/A	N/A
1104	Comb Lcl Toll 36/69	N/A	N/A	
1105	#WSWS 36	N/A	N/A	N/A
1106	Comb Toll/DSA 36/69		N/A	
1107	#WSWS 36	N/A	N/A	N/A
1108	Separate DSA 36/69		N/A	
1109	#WSWS 36	N/A	N/A	N/A
1110	Separate DSB 36/69	N/A	N/A	
1111	#WSWS 36	N/A	N/A	N/A
1112	Tot Toll Ctr 36/69		N/A	
	b) Service Observing Boards			
1120	Joint SOB 36	N/A	N/A	N/A
1121	#Exchange SOU 36	N/A	N/A	N/A
1122	#Toll SOU 36	N/A	N/A	N/A
1123	Exchange 36	N/A	N/A	N/A
1124	Joint Toll 36	N/A	N/A	N/A
1125	Sep Toll SOB 36	N/A	N/A	N/A
1126	Tot Toll SOB 36/69		N/A	
1127	#Toll MOU 36	N/A	N/A	N/A
1128	#COE 1,2 & 3 69		N/A	
1129	Tot SOB 36/69		N/A	

FCC REPORT 43-04 Approved by OMB
ARMIS ACCESS REPORT 3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION X
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 4.1 OF 30.3

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	c) Auxiliary Service Boards							
1130	Separate DA 36/69				N/A	N/A	N/A	N/A
1131	#Toll WSWS 36				N/A	N/A	N/A	N/A
1132	#Oth WSWS 36				N/A	N/A	N/A	N/A
1133	Toll DA 36/69				N/A	N/A	N/A	N/A
1134	#Toll WSWS 36				N/A	N/A	N/A	N/A
1135	Other DA 36/69				N/A	N/A	N/A	N/A
1136	#WSWS 36				N/A	N/A	N/A	N/A
1137	Sep Intct/AIS 36/69				N/A	N/A	N/A	N/A
1138	#Sub Line MOU 36				N/A	N/A	N/A	N/A
1139	#DA WSWS 36				N/A	N/A	N/A	N/A
1140	#Int WSWS 36				N/A	N/A	N/A	N/A
1141	#Rate/Route WSWS 36				N/A	N/A	N/A	N/A
1142	#Toll WSWS 36				N/A	N/A	N/A	N/A
1143	#Oth WSWS 36				N/A	N/A	N/A	N/A
1144	Joint ASB DA 36/69				N/A	N/A	N/A	N/A
1145	Toll ASB DA 36				N/A	N/A	N/A	N/A
1146	#Toll WSWS 36				N/A	N/A	N/A	N/A
1147	Oth ASB DA 36				N/A	N/A	N/A	N/A
1148	#Oth WSWS 36				N/A	N/A	N/A	N/A
1149	Joint ASB Int 36/69				N/A	N/A	N/A	N/A
1150	#Sub Line MOU 36				N/A	N/A	N/A	N/A
1151	Rate & Route 36/69				N/A	N/A	N/A	N/A
1152	#Rate/Route WSWS 36				N/A	N/A	N/A	N/A
1153	Tot Joint ASB 36/69				N/A	N/A	N/A	N/A
1154	Tot ASB 36/69				N/A	N/A	N/A	N/A
	d) Traffic Service Positions							
1160	Operator TSPS 36/69				N/A	N/A	N/A	N/A
1161	#WSWS 36				N/A	N/A	N/A	N/A
1162	RTA 36/69				N/A	N/A	N/A	N/A
1163	#Proc Real Tme 36				N/A	N/A	N/A	N/A
1164	Remain Inv 36/69				N/A	N/A	N/A	N/A
1165	#Proc Real Tme 36				N/A	N/A	N/A	N/A
1166	Other TSP 36/69				N/A	N/A	N/A	N/A
1167	#WSWS 36				N/A	N/A	N/A	N/A
1168	Tot TSP 36/69				N/A	N/A	N/A	N/A
1170	Tot Cat 1 36/69				N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	c) Auxiliary Service Boards							
1130	Separate DA 36/69	N/A	N/A	N/A	N/A			N/A
1131	#Toll WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1132	#Oth WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1133	Toll DA 36/69	N/A	N/A	N/A	N/A			N/A
1134	#Toll WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1135	Other DA 36/69	N/A	N/A	N/A	N/A			N/A
1136	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1137	Sep Intct/AIS 36/69	N/A		N/A	N/A	N/A		N/A
1138	#Sub Line MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1139	#DA WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1140	#Int WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1141	#Rate/Route WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1142	#Toll WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1143	#Oth WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1144	Joint ASB DA 36/69	N/A	N/A	N/A	N/A			N/A
1145	Toll ASB DA 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1146	#TOLL WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1147	Oth ASB DA 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1148	#OTH WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1149	Joint ASB Int 36/69	N/A		N/A	N/A	N/A		N/A
1150	#Sub Line MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1151	Rate & Route 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1152	#Rate/Route WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1153	Tot Joint ASB 36/69	N/A		N/A	N/A			N/A
1154	Tot ASB 36/69	N/A		N/A	N/A			N/A
	d) Traffic Service Positions							
1160	Operator TSPS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1161	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1162	RTA 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1163	#Proc Real Tme 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1164	Remain Inv 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1165	#Proc Real Tme 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1166	Other TSP 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1167	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1168	Tot TSP 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1170	Tot Cat 1 36/69	N/A		N/A				N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	c) Auxiliary Service Boards			
1130	Separate DA 36/69		N/A	N/A
1131	#Toll WSWS 36	N/A	N/A	N/A
1132	#Oth WSWS 36	N/A	N/A	N/A
1133	Toll DA 36/69		N/A	N/A
1134	#Toll WSWS 36	N/A	N/A	N/A
1135	Other DA 36/69		N/A	N/A
1136	#WSWS 36	N/A	N/A	N/A
1137	Sep Intct/AIS 36/69		N/A	N/A
1138	#Sub Line MOU 36	N/A	N/A	N/A
1139	#DA WSWS 36	N/A	N/A	N/A
1140	#Int WSWS 36	N/A	N/A	N/A
1141	#Rate/Route WSWS 36	N/A	N/A	N/A
1142	#Toll WSWS 36	N/A	N/A	N/A
1143	#Oth WSWS 36	N/A	N/A	N/A
1144	Joint ASB DA 36/69		N/A	N/A
1145	Toll ASB DA 36	N/A	N/A	N/A
1146	#TOLL WSWS 36	N/A	N/A	N/A
1147	Oth ASB DA 36	N/A	N/A	N/A
1148	#Oth WSWS 36	N/A	N/A	N/A
1149	Joint ASB Int 36/69		N/A	N/A
1150	#Sub Line MOU 36	N/A	N/A	N/A
1151	Rate & Route 36/69	N/A	N/A	
1152	#Rate/Route WSWS 36	N/A	N/A	N/A
1153	Tot Joint ASB 36/69		N/A	
1154	Tot ASB 36/69		N/A	
	d) Traffic Service Positions			
1160	Operator TSPS 36	N/A	N/A	
1161	#WSWS 36	N/A	N/A	N/A
1162	RTA 36	N/A	N/A	
1163	#Proc Real Tme 36	N/A	N/A	N/A
1164	Remain Inv 36	N/A	N/A	
1165	#Proc Real Tme 36	N/A	N/A	N/A
1166	Other TSP 36	N/A	N/A	
1167	#WSWS 36	N/A	N/A	N/A
1168	Tot TSP 36/69	N/A	N/A	
1170	Tot Cat 1 36/69		N/A	

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	2. Category 2 COE - Tandem Switching Equipment							
1200	Direct PL 36				N/A	N/A	N/A	N/A
1201	Direct Message 36				N/A	N/A	N/A	N/A
1202	Joint 36				N/A	N/A	N/A	N/A
1203	#Tandem MOU 36				N/A	N/A	N/A	N/A
1204	Tot Cat 2 36/69				N/A	N/A	N/A	N/A
	3. Category 3 COE - Local Switching Equipment							
1210	Direct PL 36				N/A	N/A	N/A	N/A
1211	Direct Message 36				N/A	N/A	N/A	N/A
1212	Joint 36				N/A	N/A	N/A	N/A
1213	#IAF 36 %				N/A	N/A	N/A	N/A
1214	#CAF 36 %				N/A	N/A	N/A	N/A
1215	#A Component 36 %		N/A	N/A	N/A	N/A	N/A	N/A
1216	#DEM 36				N/A	N/A	N/A	N/A
1217	#B Component 36 %		N/A	N/A	N/A	N/A	N/A	N/A
1219	Tot Cat 3 36/69				N/A	N/A	N/A	N/A
	4. Category 4 COE - Circuit Equipment							
	a) Category 4.1 COE - Exchange Circuit Equipment							
	(1) Category 4.11 COE - Wideband Exchange Line Circuit Equipment							
1220	Direct PL 36				N/A	N/A	N/A	N/A
1221	Direct Message 36				N/A	N/A	N/A	N/A
1222	Joint 36				N/A	N/A	N/A	N/A
1223	#MOU 36				N/A	N/A	N/A	N/A
1224	Tot Cat 4.11 36/69				N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	2. Category 2 COE - Tandem Switching Equipment							
1200	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1201	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1202	Joint 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1203	#Tandem MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1204	Tot Cat 2 36/69	N/A	N/A	N/A		N/A		N/A
	3. Category 3 COE - Local Switching Equipment							
1210	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1211	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1212	Joint 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1213	#IAF 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1214	#CAF 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1215	#A Component 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1216	#DEM 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1217	#B Component 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1219	Tot Cat 3 36/69	N/A		N/A		N/A		N/A
	4. Category 4 COE - Circuit Equipment							
	a) Category 4.1 COE - Exchange Circuit Equipment							
	(1) Category 4.11 COE - Wideband Exchange Line Circuit Equipment							
1220	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1221	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1222	Joint 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1223	#MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1224	Tot Cat 4.11 36/69	N/A	N/A	N/A		N/A		

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	2. Category 2 COE - Tandem Switching Equipment			
1200	Direct PL 36	N/A	N/A	N/A
1201	Direct Message 36	N/A	N/A	N/A
1202	Joint 36	N/A	N/A	N/A
1203	#Tandem MOU 36	N/A	N/A	N/A
1204	Tot Cat 2 36/69		N/A	
	3. Category 3 COE - Local Switching Equipment			
1210	Direct PL 36	N/A	N/A	N/A
1211	Direct Message 36	N/A	N/A	N/A
1212	Joint 36	N/A	N/A	N/A
1213	#IAF 36 %	N/A	N/A	N/A
1214	#CAF 36 %	N/A	N/A	N/A
1215	#A Component 36 %	N/A	N/A	N/A
1216	#DEM 36	N/A	N/A	N/A
1217	#B Component 36 %	N/A	N/A	N/A
1219	Tot Cat 3 36/69		N/A	N/A
	4. Category 4 COE - Circuit Equipment			
	a) Category 4.1 COE - Exchange Circuit Equipment			
	(1) Category 4.11 COE - Wideband Exchange Line Circuit Equipment			
1220	Direct PL 36	N/A	N/A	N/A
1221	Direct Message 36	N/A	N/A	N/A
1222	Joint 36	N/A	N/A	N/A
1223	#MOU 36	N/A	N/A	N/A
1224	Tot Cat 4.11 36/69		N/A	

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	(2) Category 4.12 COE-Exchange Trunk Circuit Equipment (Wideband and Non-Wideband)							
	(a) Basic Non-Wideband Category 4.12 COE							
1230	Direct PL 36				N/A	N/A	N/A	N/A
1231	Direct Message 36				N/A	N/A	N/A	N/A
1232	Joint 36				N/A	N/A	N/A	N/A
1233	#MOU 36				N/A	N/A	N/A	N/A
1234	Tot Bas NonW 36				N/A	N/A	N/A	N/A
	(b) Special Non-Wideband Category 4.12 COE							
1240	Direct PL 36				N/A	N/A	N/A	N/A
1241	TWX 36				N/A	N/A	N/A	N/A
1242	#TWX MOU 36				N/A	N/A	N/A	N/A
1243	Tot Sp NonW 36				N/A	N/A	N/A	N/A
	(c) Wideband Category 4.12 COE							
1250	Direct PL 36				N/A	N/A	N/A	N/A
1251	Direct Message 36				N/A	N/A	N/A	N/A
1252	Joint 36				N/A	N/A	N/A	N/A
1253	#MOU 36				N/A	N/A	N/A	N/A
1254	Tot Wide 4.12 36				N/A	N/A	N/A	N/A
1260	Tot Cat 4.12 36/69				N/A	N/A	N/A	N/A
	(3) Category 4.13 COE-Exchange Line Circuit Equipment Excluding Wideband							
	(a) Basic Category 4.13 COE							
1270	#Tot Wrk Loop 36/69		N/A	N/A		N/A		N/A
1271	#PL/WATS Loops 36				N/A	N/A	N/A	N/A
1272	#Sub/CL Loops 36		N/A	N/A	N/A	N/A	N/A	N/A
1273	#Cost Per Loop 36		N/A	N/A	N/A	N/A	N/A	N/A
1274	PL/WATS 36				N/A	N/A	N/A	N/A
1275	Sub/Common Line 36				N/A	N/A	N/A	N/A
1276	#LAF 36 %				N/A	N/A	N/A	N/A
1277	Tot Basic 36				N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	(2) Category 4.12 COE-Exchange Trunk Circuit Equipment (Wideband and Non-Wideband)							
	(a) Basic Non-Wideband Category 4.12 COE							
1230	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1231	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1232	Joint 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1233	#MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1234	Tot Bas NonW 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(b) Special Non-Wideband Category 4.12 COE							
1240	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1241	TWX 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1242	#TWX MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1243	Tot Sp NonW 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(c) Wideband Category 4.12 COE							
1250	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1251	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1252	Joint 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1253	#MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1254	Tot Wide 4.12 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1260	Tot Cat 4.12 36/69	N/A	N/A	N/A		N/A		
	(3) Category 4.13 COE-Exchange Line Circuit Equipment Excluding Wideband							
	(a) Basic Category 4.13 COE							
1270	#Tot Wrk Loop 36/69		N/A	N/A	N/A	N/A	N/A	
1271	#PL/WATS Loops 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1272	#Sub/CL Loops 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1273	#Cost Per Loop 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1274	PL/WATS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1275	Sub/Common Line 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1276	#LAF 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1277	Tot Basic 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	(2) Category 4.12 COE-Exchange Trunk Circuit Equipment (Wideband and Non-Wideband)			
	(a) Basic Non-Wideband Category 4.12 COE			
1230	Direct PL 36	N/A	N/A	N/A
1231	Direct Message 36	N/A	N/A	N/A
1232	Joint 36	N/A	N/A	N/A
1233	#MOU 36	N/A	N/A	N/A
1234	Tot Bas NonW 36	N/A	N/A	N/A
	(b) Special Non-Wideband Category 4.12 COE			
1240	Direct PL 36	N/A	N/A	N/A
1241	TWX 36	N/A	N/A	N/A
1242	#TWX MOU 36	N/A	N/A	N/A
1243	Tot Sp NonW 36	N/A	N/A	N/A
	(c) Wideband Category 4.12 COE			
1250	Direct PL 36	N/A	N/A	N/A
1251	Direct Message 36	N/A	N/A	N/A
1252	Joint 36	N/A	N/A	N/A
1253	#MOU 36	N/A	N/A	N/A
1254	Tot Wide 4.12 36	N/A	N/A	N/A
1260	Tot Cat 4.12 36/69		N/A	
	(3) Category 4.13 COE-Exchange Line Circuit Equipment Excluding Wideband			
	(a) Basic Category 4.13 COE			
1270	#Tot Wrk Loop 36/69		N/A	N/A
1271	#PL/WATS Loops 36	N/A	N/A	N/A
1272	#Sub/CL Loops 36	N/A	N/A	N/A
1273	#Cost Per Loop 36	N/A	N/A	N/A
1274	PL/WATS 36	N/A	N/A	N/A
1275	Sub/Common Line 36	N/A	N/A	N/A
1276	#LAF 36 %	N/A	N/A	N/A
1277	Tot Basic 36	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	(b) Special Category 4.13 COE							
1280	Direct PL 36				N/A	N/A	N/A	N/A
1281	TWX 36				N/A	N/A	N/A	N/A
1282	#TWX MOU 36				N/A	N/A	N/A	N/A
1283	Tot Sp 4.13 36				N/A	N/A	N/A	N/A
1290	Tot Cat 4.13 36/69					N/A		N/A
1300	Tot Cat 4.1 36/69					N/A		N/A
	b) Category 4.2 COE-Interexchange Circuit Equipment							
	(1) Category 4.21-Interexchange Circuit Equipment Furnished to Another Company for Interstate Use							
1310	Furn to Other 36/69		N/A		N/A	N/A	N/A	N/A
	(2) Category 4.22 COE-Interexchange Circuit Equipment Used for Wideband Service							
1320	Direct PL 36				N/A	N/A	N/A	N/A
1321	Direct Message 36				N/A	N/A	N/A	N/A
1322	Joint 36				N/A	N/A	N/A	N/A
1323	#CMM 36				N/A	N/A	N/A	N/A
1324	Tot Cat 4.22 36/69				N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	(b) Special Category 4.13 COE							
1280	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1281	TWX 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1282	#TWX MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1283	Tot Sp 4.13 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1290	Tot Cat 4.13 36/69		N/A	N/A	N/A	N/A	N/A	
1300	Tot Cat 4.1 36/69		N/A	N/A		N/A		
	b) Category 4.2 COE-Interexchange Circuit Equipment							
	(1) Category 4.21-Interexchange Circuit Equipment Furnished to Another Company for Interstate Use							
1310	Furn to Other 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(2) Category 4.22 COE-Interexchange Circuit Equipment Used for Wideband Service							
1320	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1321	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1322	Joint 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1323	#CMM 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1324	Tot Cat 4.22 36/69	N/A	N/A	N/A		N/A		

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	(b) Special Category 4.13 COE			
1280	Direct PL 36	N/A	N/A	N/A
1281	TWX 36	N/A	N/A	N/A
1282	#TWX MOU 36	N/A	N/A	N/A
1283	Tot Sp 4.13 36	N/A	N/A	N/A
1290	Tot Cat 4.13 36/69		N/A	N/A
1300	Tot Cat 4.1 36/69		N/A	
	b) Category 4.2 COE-Interexchange Circuit Equipment			
	(1) Category 4.21-Interexchange Circuit Equipment Furnished to Another Company for Interstate Use			
1310	Furn to Other 36/69	N/A	N/A	
	(2) Category 4.22 COE-Interexchange Circuit Equipment Used for Wideband Service			
1320	Direct PL 36	N/A	N/A	N/A
1321	Direct Message 36	N/A	N/A	N/A
1322	Joint 36	N/A	N/A	N/A
1323	#CMM 36	N/A	N/A	N/A
1324	Tot Cat 4.22 36/69		N/A	

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	(3) Category 4.23 COE-All Other Interexchange Circuit Equipment							
	(a) Basic Category 4.23 COE							
1330	#Tot Term 36		N/A	N/A	N/A	N/A	N/A	N/A
1331	#PL Term 36		N/A	N/A	N/A	N/A	N/A	N/A
1332	#Direct Msg Term 36		N/A	N/A	N/A	N/A	N/A	N/A
1333	#Joint Msg Term 36		N/A	N/A	N/A	N/A	N/A	N/A
1334	#TWX Term 36		N/A	N/A	N/A	N/A	N/A	N/A
1335	#Cost Per Term 36		N/A	N/A	N/A	N/A	N/A	N/A
1336	Direct PL 36				N/A	N/A	N/A	N/A
1337	Direct Message 36				N/A	N/A	N/A	N/A
1338	Joint 36				N/A	N/A	N/A	N/A
1339	#CM 36				N/A	N/A	N/A	N/A
1340	TWX 36				N/A	N/A	N/A	N/A
1341	#Connect Min 36				N/A	N/A	N/A	N/A
1342	Tot Bas 4.23 36				N/A	N/A	N/A	N/A
	(b) Special Category 4.23 COE							
1350	Direct PL 36				N/A	N/A	N/A	N/A
1351	TWX 36				N/A	N/A	N/A	N/A
1352	#Connect Min 36				N/A	N/A	N/A	N/A
1360	Tot Sp 4.23 36				N/A	N/A	N/A	N/A
1370	Tot Cat 4.23 36/69				N/A	N/A	N/A	N/A
1380	Tot Cat 4.2 36/69				N/A	N/A	N/A	N/A
	c) Category 4.3 COE-Host/Remote Message Circuit Equipment							
1390	WATS 36				N/A	N/A	N/A	N/A
1391	Direct Mesg 36				N/A	N/A	N/A	N/A
1392	Joint Mesg 36				N/A	N/A	N/A	N/A
1393	#MOU Miles 36				N/A	N/A	N/A	N/A
1394	Tot Cat 4.3 36/69				N/A	N/A	N/A	N/A
1400	Tot Cat 4 36/69					N/A		N/A
1410	Tot COE 36/69					N/A		N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	(3) Category 4.23 COE-All Other Interexchange Circuit Equipment							
	(a) Basic Category 4.23 COE							
1330	#Tot Term 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1331	#PL Term 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1332	#Direct Msg Term 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1333	#Joint Msg Term 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1334	#TWX Term 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1335	#Cost Per Term 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1336	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1337	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1338	Joint 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1339	#CM 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1340	TWX 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1341	#Connect Min 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1342	Tot Bas 4.23 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(b) Special Category 4.23 COE							
1350	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1351	TWX 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1352	#Connect Min 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1360	Tot Sp 4.23 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1370	Tot Cat 4.23 36/69	N/A	N/A	N/A		N/A		
1380	Tot Cat 4.2 36/69	N/A	N/A	N/A		N/A		
	c) Category 4.3 COE-Host/Remote Message Circuit Equipment							
1390	WATS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1391	Direct Mesg 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1392	Joint Mesg 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1393	#MOU Miles 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1394	Tot Cat 4.3 36/69	N/A	N/A	N/A		N/A		
1400	Tot Cat 4 36/69		N/A	N/A		N/A		
1410	Tot COE 36/69			N/A				

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	(3) Category 4.23 COE-All Other Interexchange Circuit Equipment			
	(a) Basic Category 4.23 COE			
1330	#Tot Term 36	N/A	N/A	N/A
1331	#PL Term 36	N/A	N/A	N/A
1332	#Direct Msg Term 36	N/A	N/A	N/A
1333	#Joint Msg Term 36	N/A	N/A	N/A
1334	#TWX Term 36	N/A	N/A	N/A
1335	#Cost Per Term 36	N/A	N/A	N/A
1336	Direct PL 36	N/A	N/A	N/A
1337	Direct Message 36	N/A	N/A	N/A
1338	Joint 36	N/A	N/A	N/A
1339	#CM 36	N/A	N/A	N/A
1340	TWX 36	N/A	N/A	N/A
1341	#Connect Min 36	N/A	N/A	N/A
1342	Tot Bas 4.23 36	N/A	N/A	N/A
	(b) Special Category 4.23 COE			
1350	Direct PL 36	N/A	N/A	N/A
1351	TWX 36	N/A	N/A	N/A
1352	#Connect Min 36	N/A	N/A	N/A
1360	Tot Sp 4.23 36	N/A	N/A	N/A
1370	Tot Cat 4.23 36/69		N/A	
1380	Tot Cat 4.2 36/69		N/A	
	c) Category 4.3 COE-Host/Remote Message Circuit Equipment			
1390	WATS 36	N/A	N/A	N/A
1391	Direct Msg 36	N/A	N/A	N/A
1392	Joint Msg 36	N/A	N/A	N/A
1393	#MOU Miles 36	N/A	N/A	N/A
1394	Tot Cat 4.3 36/69		N/A	
1400	Tot Cat 4 36/69		N/A	
1410	Tot COE 36/69		N/A	

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line Pay (e)	Common Line Inside Wire (f)	Common Line BPP (g)	Common Line CPE (h)
	C. Information Origination/Termination Equipment (IOT)							
	1. Category 1 IOT-Other IOT							
	Part 36 Detail							
1420	Oth Less Coinlss 36				N/A	N/A	N/A	N/A
1421	#LAF 36 %				N/A	N/A	N/A	N/A
1422	Coinless Pay 36				N/A	N/A	N/A	N/A
1423	#LEC MOU 36				N/A	N/A	N/A	N/A
	Part 69 Detail							
1424	Public Direct 69	N/A	N/A			N/A	N/A	N/A
1425	Other IOT 69	N/A	N/A		N/A			N/A
1426	#Equiv Lines 69	N/A	N/A		N/A		N/A	N/A
1427	#LAF 69 %	N/A	N/A		N/A	N/A	N/A	N/A
1428	Tot Cat 1 36/69							N/A
	2. Category 2 IOT-New Customer Premises Equipment							
1430	New CPE 36			N/A	N/A	N/A	N/A	N/A
1440	Tot IOT Equip 36/69							N/A
	D. Cable and Wire Facilities (C&WF)							
	1. Category 1 C&WF-Exchange Line C&WF							
1450	#Tot Wrk Loop 36/69		N/A	N/A		N/A		N/A
1451	#PL/WATS Loops 36		N/A	N/A	N/A	N/A	N/A	N/A
1452	#Sub/CL Loops 36		N/A	N/A	N/A	N/A	N/A	N/A
1453	#Cost Per Loop 36		N/A	N/A	N/A	N/A	N/A	N/A
1454	PL/WATS 36				N/A	N/A	N/A	N/A
1455	Sub/Common Lines 36				N/A	N/A	N/A	N/A
1456	#1981 SPF 36 %				N/A	N/A	N/A	N/A
1457	#Prev Yr ATSPF 36 %				N/A	N/A	N/A	N/A
1458	#Current ATSPF 36 %				N/A	N/A	N/A	N/A
1459	#LAF 36 %				N/A	N/A	N/A	N/A
1460	Tot Cat 1 36/69					N/A		N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	C. Information Origination/Termination Equipment (IOT)							
	1. Category 1 IOT-Other IOT							
	Part 36 Detail							
1420	Oth Less Coinlss 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1421	$LAF 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1422	Coinless Pay 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1423	$LEC MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Part 69 Detail							
1424	Public Direct 69		N/A	N/A	N/A	N/A	N/A	N/A
1425	Other IOT 69		N/A	N/A	N/A	N/A	N/A	
1426	$Equiv Lines 69		N/A	N/A	N/A	N/A	N/A	
1427	$LAF 69 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1428	Tot Cat 1 36/69		N/A	N/A	N/A	N/A	N/A	
	2. Category 2 IOT-New Customer Premises Equipment							
1430	New CPE 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1440	Tot IOT Equip 36/69		N/A	N/A	N/A	N/A	N/A	
	D. Cable and Wire Facilities (C&WF)							
	1. Category 1 C&WF-Exchange Line C&WF							
1450	$Tot Wrk Loop 36/69		N/A	N/A	N/A	N/A	N/A	
1451	$PL/WATS Loops 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1452	$Sub/CL Loops 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1453	$Cost Per Loop 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1454	PL/WATS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1455	Sub/Common Lines 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1456	$1981 SPF 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1457	$Prev Yr ATSPF 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1458	$Current ATSPF 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1459	$LAF 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1460	Tot Cat 1 36/69		N/A	N/A	N/A	N/A	N/A	

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	C. Information Origination/Termination Equipment (IOT)			
	1. Category 1 IOT-Other IOT			
	Part 36 Detail			
1420	Oth Less Coinlss 36	N/A	N/A	N/A
1421	#LAF 36 %	N/A	N/A	N/A
1422	Coinless Pay 36	N/A	N/A	N/A
1423	#LEC MOU 36	N/A	N/A	N/A
	Part 69 Detail			
1424	Public Direct 69		N/A	N/A
1425	Other IOT 69		N/A	N/A
1426	#Equiv Lines 69		N/A	N/A
1427	#LAF 69 %	N/A	N/A	N/A
1428	Tot Cat 1 36/69		N/A	N/A
	2. Category 2 IOT-New Customer Premises Equipment			
1430	New CPE 36	N/A	N/A	N/A
1440	Tot IOT Equip 36/69		N/A	N/A
	D. Cable and Wire Facilities (C&WF)			
	1. Category 1 C&WF-Exchange Line C&WF			
1450	#Tot Wrk Loop 36/69		N/A	N/A
1451	#PL/WATS Loops 36	N/A	N/A	N/A
1452	#Sub/CL Loops 36	N/A	N/A	N/A
1453	#Cost Per Loop 36	N/A	N/A	N/A
1454	PL/WATS 36	N/A	N/A	N/A
1455	Sub/Common Lines 36	N/A	N/A	N/A
1456	#1981 SPF 36 %	N/A	N/A	N/A
1457	#Prev Yr ATSPF 36 %	N/A	N/A	N/A
1458	#Current ATSPF 36 %	N/A	N/A	N/A
1459	#LAF 36 %	N/A	N/A	N/A
1460	Tot Cat 1 36/69		N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	2. Category 2 C&WF-Wideband and Exchange Trunk C&WF							
	a) Exchange Trunk Category 2 C&WF (Non-Wideband)							
1470	Direct PL 36				N/A	N/A	N/A	N/A
1471	Direct Message 36				N/A	N/A	N/A	N/A
1472	Joint 36				N/A	N/A	N/A	N/A
1473	#MOU 36				N/A	N/A	N/A	N/A
1474	Tot Non-W Ex Tnk 36				N/A	N/A	N/A	N/A
	b) Wideband Category 2 C&WF							
1480	Direct PL 36				N/A	N/A	N/A	N/A
1481	Direct Message 36				N/A	N/A	N/A	N/A
1482	Joint 36				N/A	N/A	N/A	N/A
1483	#MOU 36				N/A	N/A	N/A	N/A
1484	Tot Wide Cat 2 36				N/A	N/A	N/A	N/A
1485	Tot Cat 2 36/69				N/A	N/A	N/A	N/A
	3. Category 3 C&WF-Interexchange C&WF							
1490	#Tot Cir Mi 36		N/A	N/A	N/A	N/A	N/A	N/A
1491	#PL Cir Mi 36		N/A	N/A	N/A	N/A	N/A	N/A
1492	#Dir Msg Cir Mi 36		N/A	N/A	N/A	N/A	N/A	N/A
1493	#Joint Cir Mi 36		N/A	N/A	N/A	N/A	N/A	N/A
1494	#TWX Cir Mi 36		N/A	N/A	N/A	N/A	N/A	N/A
1495	#Cost Per Cir Mi 36		N/A	N/A	N/A	N/A	N/A	N/A
1496	Direct PL 36				N/A	N/A	N/A	N/A
1497	Direct Message 36				N/A	N/A	N/A	N/A
1498	Joint Message 36				N/A	N/A	N/A	N/A
1499	#CMM 36				N/A	N/A	N/A	N/A
1500	TWX 36				N/A	N/A	N/A	N/A
1501	#CMM 36				N/A	N/A	N/A	N/A
1510	Tot Cat 3 36/69				N/A	N/A	N/A	N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	2. Category 2 C&WF-Wideband and Exchange Trunk C&WF							
	a) Exchange Trunk Category 2 C&WF (Non-Wideband)							
1470	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1471	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1472	Joint 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1473	#MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1474	Tot Non-W Ex Tnk 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	b) Wideband Category 2 C&WF							
1480	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1481	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1482	Joint 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1483	#MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1484	Tot Wide Cat 2 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1485	Tot Cat 2 36/69	N/A	N/A	N/A		N/A		
	3. Category 3 C&WF-Interexchange C&WF							
1490	#Tot Cir Mi 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1491	#PL Cir Mi 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1492	#Dir Msg Cir Mi 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1493	#Joint Cir Mi 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1494	#TWX Cir Mi 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1495	#Cost Per Cir Mi 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1496	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1497	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1498	Joint Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1499	#CMM 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1500	TWX 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1501	#CMM 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1510	Tot Cat 3 36/69	N/A	N/A	N/A		N/A		

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	2. Category 2 C&WF-Wideband and Exchange Trunk C&WF			
	a) Exchange Trunk Category 2 C&WF (Non-Wideband)			
1470	Direct PL 36	N/A	N/A	N/A
1471	Direct Message 36	N/A	N/A	N/A
1472	Joint 36	N/A	N/A	N/A
1473	#MOU 36	N/A	N/A	N/A
1474	Tot Non-W Ex Tnk 36	N/A	N/A	N/A
	b) Wideband Category 2 C&WF			
1480	Direct PL 36	N/A	N/A	N/A
1481	Direct Message 36	N/A	N/A	N/A
1482	Joint 36	N/A	N/A	N/A
1483	#MOU 36	N/A	N/A	N/A
1484	Tot Wide Cat 2 36	N/A	N/A	N/A
1485	Tot Cat 2 36/69		N/A	
	3. Category 3 C&WF-Interexchange C&WF			
1490	#Tot Cir Mi 36	N/A	N/A	N/A
1491	#PL Cir Mi 36	N/A	N/A	N/A
1492	#Dir Msg Cir Mi 36	N/A	N/A	N/A
1493	#Joint Cir Mi 36	N/A	N/A	N/A
1494	#TWX Cir Mi 36	N/A	N/A	N/A
1495	#Cost Per Cir Mi 36	N/A	N/A	N/A
1496	Direct PL 36	N/A	N/A	N/A
1497	Direct Message 36	N/A	N/A	N/A
1498	Joint Message 36	N/A	N/A	N/A
1499	#CMM 36	N/A	N/A	N/A
1500	TWX 36	N/A	N/A	N/A
1501	#CMM 36	N/A	N/A	N/A
1510	Tot Cat 3 36/69		N/A	

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx | xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx | SUBMISSION X
PERIOD: From mmm yyyy To mmm yyyy | TABLE I
COSA: xxxx | PAGE 11.1 OF 30.3

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	4. Category 4 C&WF-Host/Remote Message C&WF							
1520	WATS 36				N/A	N/A	N/A	N/A
1521	Direct Message 36				N/A	N/A	N/A	N/A
1522	Joint Message 36				N/A	N/A	N/A	N/A
1523	#MOU 36				N/A	N/A	N/A	N/A
1524	Tot Cat 4 36/69				N/A	N/A	N/A	N/A
1530	Tot C&WF 36/69					N/A		N/A
1540	Tot Tel Plant 36/69							N/A
	III. Other Telecommunications Property							
	A. Tangible Assets							
	1. Capital Leases							
2000	Direct Cap Leas 36				N/A	N/A	N/A	N/A
2001	GSF 36				N/A	N/A	N/A	N/A
2002	#GSF 36				N/A	N/A	N/A	N/A
2003	COE Switch 36/69				N/A	N/A	N/A	N/A
2004	#COE Switch 36				N/A	N/A	N/A	N/A
2005	Op Sys 36/69				N/A	N/A	N/A	N/A
2006	#Op Sys 36				N/A	N/A	N/A	N/A
2007	Transmission 36/69					N/A		N/A
2008	#Transmission 36				N/A	N/A	N/A	N/A
2009	IOT 36/69							N/A
2010	#IOT 36				N/A	N/A	N/A	N/A
2011	C&WF 36/69					N/A		N/A
2012	#C&WF 36				N/A	N/A	N/A	N/A
2013	Alloc Cap Lease 69	N/A	N/A					N/A
2014	#TPIS 69	N/A	N/A					N/A
2020	Tot Cap Lease 36/69							N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	4. Category 4 C&WF-Host/Remote Message C&WF							
1520	WATS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1521	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1522	Joint Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1523	#MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1524	Tot Cat 4 36/69		N/A	N/A		N/A		
1530	Tot C&WF 36/69		N/A	N/A		N/A		
1540	Tot Tel Plant 36/69							
	III. Other Telecommunications Property							
	A. Tangible Assets							
	1. Capital Leases							
2000	Direct Cap Leas 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2001	GSF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2002	#GSF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2003	#COE Switch 36/69	N/A		N/A		N/A		N/A
2004	#COE Switch 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2005	Op Sys 36/69	N/A		N/A				N/A
2006	#Op Sys 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2007	Transmission 36/69		N/A	N/A		N/A		
2008	#Transmission 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2009	IOT 36/69		N/A	N/A	N/A	N/A	N/A	N/A
2010	#IOT 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2011	C&WF 36/69		N/A	N/A		N/A		
2012	#C&WF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2013	Alloc Cap Lease 69							
2014	#TPIS 69							
2020	Tot Cap Lease 36/69							

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TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	4. Category 4 C&WF-Host/Remote Message C&WF			
1520	WATS 36	N/A	N/A	N/A
1521	Direct Message 36	N/A	N/A	N/A
1522	Joint Message 36	N/A	N/A	N/A
1523	#MOU 36	N/A	N/A	N/A
1524	Tot Cat 4 36/69		N/A	
1530	Tot C&WF 36/69		N/A	
1540	Tot Tel Plant 36/69			
	III. Other Telecommunications Property			
	A. Tangible Assets			
	1. Capital Leases			
2000	Direct Cap Leas 36	N/A	N/A	N/A
2001	GSF 36	N/A	N/A	N/A
2002	#GSF 36	N/A	N/A	N/A
2003	COE Switch 36/69		N/A	
2004	#COE Switch 36	N/A	N/A	N/A
2005	Op Sys 36/69		N/A	
2006	#Op Sys 36	N/A	N/A	N/A
2007	Transmission 36/69		N/A	
2008	#Transmission 36	N/A	N/A	N/A
2009	IOT 36/69		N/A	N/A
2010	#IOT 36	N/A	N/A	N/A
2011	C&WF 36/69		N/A	
2012	#C&WF 36	N/A	N/A	N/A
2013	Alloc Cap Lease 69			
2014	#TPIS 69			
2020	Tot Cap Lease 36/69			

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	2. Leasehold Improvements							
2070	GSF 36				N/A	N/A	N/A	N/A
2071	#GSF 36				N/A	N/A	N/A	N/A
2080	COE Switch 36				N/A	N/A	N/A	N/A
2081	#COE Switch 36				N/A	N/A	N/A	N/A
2090	Op Sys 36				N/A	N/A	N/A	N/A
2091	#Op Sys 36				N/A	N/A	N/A	N/A
2100	Transmission 36				N/A	N/A	N/A	N/A
2101	#Transmission 36				N/A	N/A	N/A	N/A
2110	IOT 36				N/A	N/A	N/A	N/A
2111	#IOT 36				N/A	N/A	N/A	N/A
2120	C&WF 36				N/A	N/A	N/A	N/A
2121	#C&WF 36				N/A	N/A	N/A	N/A
2130	Tot Leas Imp 69	N/A	N/A					N/A
2131	#Combined Inv 69	N/A	N/A					N/A
2140	Tot Leas Imp 36/69	N/A	N/A					N/A
2150	Tot Tang Ass 36/69							N/A
	B. Intangible Assets							
2160	Intan Ass 36/69							N/A
2161	#TPIS Less Intan 36				N/A	N/A	N/A	N/A
2162	#Combined Inv 69	N/A	N/A					N/A
	C. Other Telecommunications Plant							
2190	PHFTU 36				N/A	N/A	N/A	N/A
2191	TPUC Short 36				N/A	N/A	N/A	N/A
2192	TPUC Long 36/69				N/A	N/A	N/A	N/A
2193	Tel Plant Adj 36				N/A	N/A	N/A	N/A
2194	#TPIS 36				N/A	N/A	N/A	N/A
2195	PHFTU/TPUC COE 69	N/A	N/A			N/A		N/A
2196	#COE/Inv 69	N/A	N/A			N/A		N/A
2197	PHFTU/TPUC C&WF 69	N/A	N/A			N/A		N/A
2198	#C&WF Inv 69	N/A	N/A			N/A		N/A
2199	PHFTU/TPUC GSF 69	N/A	N/A					N/A
2200	#GSF Inv 69	N/A	N/A					N/A
2201	Other 69	N/A	N/A					N/A
2202	#TPIS 69	N/A	N/A					N/A
2203	Tot Oth Plant 36/69							N/A

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TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	EqualAccess (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	2. Leasehold Improvements							
2070	GSF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2071	#GSF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2080	COE Switch 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2081	#COE Switch 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2090	Op Sys 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2091	#Op Sys 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2100	Transmission 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2101	#Transmission 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2110	IOT 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2111	#IOT 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2120	C&WF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2121	#C&WF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2130	Tot Leas Imp 69							
2131	#Combined Inv 69							
2140	Tot Leas Imp 36/69							
2150	Tot Tang Ass 36/69							
	B. Intangible Assets							
2160	Intan Ass 36/69							
2161	#TPIS Less Intan 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2162	#Combined Inv 69							
	C. Other Telecommunications Plant							
2190	PHFTU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2191	TPUC Short 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2192	TPUC Long 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2193	Tel Plant Adj 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2194	#TPIS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2195	PHFTU/TPUC COE 69			N/A				
2196	#COE Inv 69			N/A				
2197	PHFTU/TPUC C&WF 69		N/A	N/A		N/A		
2198	#C&WF Inv 69		N/A	N/A		N/A		
2199	PHFTU/TPUC GSF 69			N/A				
2200	#GSF Inv 69			N/A				
2201	Other 69							
2202	#TPIS 69							
2203	Tot Oth Plant 36/69							

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	2. Leasehold Improvements			
2070	GSF 36	N/A	N/A	N/A
2071	#GSF 36	N/A	N/A	N/A
2080	COE Switch 36	N/A	N/A	N/A
2081	#COE Switch 36	N/A	N/A	N/A
2090	Op Sys 36	N/A	N/A	N/A
2091	#Op Sys 36	N/A	N/A	N/A
2100	Transmission 36	N/A	N/A	N/A
2101	#Transmission 36	N/A	N/A	N/A
2110	IOT 36	N/A	N/A	N/A
2111	#IOT 36	N/A	N/A	N/A
2120	C&WF 36	N/A	N/A	N/A
2121	#C&WF 36	N/A	N/A	N/A
2130	Tot Leas Imp 69			
2131	#Combined Inv 69			
2140	Tot Leas Imp 36/69			
2150	Tot Tang Ass 36/69			
	B. Intangible Assets			
2160	Intan Ass 36/69			
2161	#TPIS Less Intan 36	N/A	N/A	N/A
2162	#Combined Inv 69			
	C. Other Telecommunications Plant			
2190	PHFTU 36	N/A	N/A	N/A
2191	TPUC Short 36	N/A	N/A	N/A
2192	TPUC Long 36	N/A	N/A	N/A
2193	Tel Plant Adj 36	N/A	N/A	N/A
2194	#TPIS 36	N/A	N/A	N/A
2195	PHFTU/TPUC COE 69		N/A	
2196	#COE Inv 69		N/A	
2197	PHFTU/TPUC C&WF 69		N/A	
2198	#C&WF Inv 69		N/A	
2199	PHFTU/TPUC GSF 69			
2200	#GSF Inv 69			
2201	Other 69			
2202	#TPIS 69			
2203	Tot Oth Plant 36/69			

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line Pay (e)	Common Line Inside Wire (f)	Common Line BFP (g)	Common Line CPE (h)
	D. Rural Telephone Bank Stock							
2210	Cls B RTB Stk 36/69							N/A
2211	#TPIS 36				N/A	N/A	N/A	N/A
2212	#Combined Inv 69	N/A	N/A					N/A
	E. Material and Supplies and Cash Working Capital							
	1. Material and Supplies							
2220	CPE M&S 36			N/A	N/A	N/A	N/A	N/A
2221	All Other M&S 36/69							N/A
2222	#C&WF 36				N/A	N/A	N/A	N/A
2223	#Combined Inv 69	N/A	N/A					N/A
2224	Tot M&S 36/69							N/A
	2. Cash Working Capital							
2230	CWC 36/69	N/A	N/A					N/A
2231	#Combined Inv 69	N/A	N/A					N/A
2240	Tot O Tel Pro 36/69							N/A
	F. FCC Investment Adjustment							
2250	FCC Inv Adj 36/69	N/A	N/A					N/A
2260	Tot Tel Pro 36							N/A
	IV. Reserves and Deferrals							
	A. Other Jursidictional Assets							
3000	Other Jur Ass 36			N/A	N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive Switching (j)	Traffic Sensitive EqualAccess (k)	Traffic Sensitive Transport (l)	Traffic Sensitive Information (m)	Total Traffic Sen (n)	Special Access (o)
	D. Rural Telephone Bank Stock							
2210	Cls B RTB Stk 36/69							
2211	#TPIS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2212	#Combined Inv 69							
	E. Material and Supplies and Cash Working Capital							
	1. Material and Supplies							
2220	CPE M&S 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2221	All Other M&S 36/69							
2222	#C&WF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2223	#Combined Inv 69							
2224	Tot M&S 36/69							
	2. Cash Working Capital							
2230	CWC 36/69							
2231	#Combined Inv 69							
2240	Tot O Tel Pro 36/69							
	F. FCC Investment Adjustment							
2250	FCC Inv Adj 36/69							
2260	Tot Tel Pro 36							
	IV. Reserves and Deferrals							
	A. Other Jursidictional Assets							
3000	Other Jur Ass 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A

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TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	D. Rural Telephone Bank Stock			
2210	Cls B RTB Stk 36/69			
2211	#TPIS 36	N/A	N/A	N/A
2212	#Combined Inv 69			
	E. Material and Supplies and Cash Working Capital			
	1. Material and Supplies			
2220	CPE M&S 36	N/A	N/A	N/A
2221	All Other M&S 36/69			
2222	#C&WF 36	N/A	N/A	N/A
2223	#Combined Inv 69			
2224	Tot M&S 36/69			
	2. Cash Working Capital			
2230	CWC 36/69			
2231	#Combined Inv 69			
2240	Tot O Tel Pro 36/69			
	F. FCC Investment Adjustment			
2250	FCC Inv Adj 36/69			
2260	Tot Tel Pro 36/69			
	IV. Reserves and Deferrals			
	A. Other Jursidictional Assets			
3000	Other Jur Ass 36	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	B. Accumulated Depreciation							
3010	GSF 36/69							N/A
3011	#GSF 36/69							N/A
3020	Switching 36/69				N/A	N/A	N/A	N/A
3021	#Switching 36/69				N/A	N/A	N/A	N/A
3030	Op Sys 36/69				N/A	N/A	N/A	N/A
3031	#Op Sys 36/69				N/A	N/A	N/A	N/A
3040	Transmission 36/69					N/A		N/A
3041	#Transmission 36/69					N/A		N/A
3050	IOT 36/69							N/A
3051	#IOT 36/69							N/A
3060	C&WF 36/69					N/A		N/A
3061	#C&WF 36/69					N/A		N/A
3070	PHFTU 36/69							N/A
3071	#PHFTU 36/69							N/A
3080	Tot Acc Depr 36/69							N/A
	C. Accumulated Amortization							
	1. Accumulated Amortization of Tangible Assets							
	a) Accumulated Amortization of Capital Leases							
3090	GSF 36/69							N/A
3091	#GSF 36/69							N/A
3100	Switching 36/69				N/A	N/A	N/A	N/A
3101	#Switch Eqpt 36/69				N/A	N/A	N/A	N/A
3110	Op Sys 36/69				N/A	N/A	N/A	N/A
3111	#Op Sys 36/69				N/A	N/A	N/A	N/A
3120	Transmission 36/69					N/A		N/A
3121	#Transmission 36/69					N/A		N/A
3130	IOT 36/69							N/A
3131	#IOT 36/69							N/A
3140	C&WF 36/69					N/A		N/A
3141	#C&WF 36/69					N/A		N/A
3150	Tot Cap Lease 36/69							N/A

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STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	B. Accumulated Depreciation							
3010	GSF 36/69			N/A				
3011	#GSF 36/69			N/A				
3020	Switching 36/69	N/A		N/A		N/A		N/A
3021	#Switching 36/69	N/A		N/A		N/A		N/A
3030	Op Sys 36/69	N/A		N/A	N/A			N/A
3031	#Op Sys 36/69	N/A		N/A	N/A			N/A
3040	Transmission 36/69		N/A	N/A		N/A		
3041	#Transmission 36/69		N/A	N/A		N/A		
3050	IOT 36/69		N/A	N/A	N/A	N/A	N/A	
3051	#IOT 36/69		N/A	N/A	N/A	N/A	N/A	
3060	C&WF 36/69		N/A	N/A		N/A		
3061	#C&WF 36/69		N/A	N/A		N/A		
3070	PHFTU 36/69							
3071	#PHFTU 36/69							
3080	Tot Acc Depr 36/69							
	C. Accumulated Amortization							
	1. Accumulated Amortization of Tangible Assets							
	a) Accumulated Amortization of Capital Leases							
3090	GSF 36/69			N/A				
3091	#GSF 36/69			N/A				
3100	Switching 36/69	N/A		N/A		N/A		N/A
3101	#Switch Eqpt 36/69	N/A		N/A		N/A		N/A
3110	Op Sys 36/69	N/A		N/A	N/A			N/A
3111	#Op Sys 36/69	N/A		N/A	N/A			N/A
3120	Transmission 36/69		N/A	N/A		N/A		
3121	#Transmission 36/69		N/A	N/A		N/A		
3130	IOT 36/69		N/A	N/A	N/A	N/A	N/A	
3131	#IOT 36/69		N/A	N/A	N/A	N/A	N/A	
3140	C&WF 36/69		N/A	N/A		N/A		
3141	#C&WF 36/69		N/A	N/A		N/A		
3150	Tot Cap Lease 36/69							

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	B. Accumulated Depreciation			
3010	GSF 36/69			
3011	#GSF 36/69			
3020	Switching 36/69		N/A	
3021	#Switching 36/69		N/A	
3030	Op Sys 36/69		N/A	
3031	#Op Sys 36/69		N/A	
3040	Transmission 36/69		N/A	
3041	#Transmission 36/69		N/A	
3050	IOT 36/69		N/A	N/A
3051	#IOT 36/69		N/A	N/A
3060	C&WF 36/69		N/A	
3061	#C&WF 36/69		N/A	
3070	PHFTU 36/69			
3071	#PHFTU 36/69			
3080	Tot Acc Depr 36/69			
	C. Accumulated Amortization			
	1. Accumulated Amortization of Tangible Assets			
	a) Accumulated Amortization of Capital Leases			
3090	GSF 36/69			
3091	#GSF 36/69			
3100	Switching 36/69		N/A	
3101	#Switch Eqpt 36/69		N/A	
3110	Op Sys 36/69		N/A	
3111	#Op Sys 36/69		N/A	
3120	Transmission 36/69		N/A	
3121	#Transmission 36/69		N/A	
3130	IOT 36/69		N/A	N/A
3131	#IOT 36/69		N/A	N/A
3140	C&WF 36/69		N/A	
3141	#C&WF 36/69		N/A	
3150	Tot Cap Lease 36/69			

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	b) Accumulated Amortization of Leasehold Improvements							
3160	GSF 36/69							N/A
3161	#GSF 36/69							N/A
3170	Switching 36/69				N/A	N/A	N/A	N/A
3171	#Switching 36/69				N/A	N/A	N/A	N/A
3180	Op Sys 36/69				N/A	N/A	N/A	N/A
3181	#Op Sys 36/69				N/A	N/A	N/A	N/A
3190	Transmission 36/69					N/A		N/A
3191	#Transmission 36/69					N/A		N/A
3200	IOT 36/69							N/A
3201	#IOT 36/69							N/A
3210	C&WF 36/69					N/A		N/A
3211	#C&WF 36/69					N/A		N/A
3220	Tot Lease Imp 36/69							N/A
3230	Tot Tang Ass 36/69							N/A
	2. Accumulated Amortization of Intangible Assets and Other Accumulated Amortization							
3240	Intangibles 36/69							N/A
3241	#Intan Ass 36/69							N/A
3250	Other 36/69							N/A
3251	#Assd Inv 36/69							N/A
3260	Tot Int/Oth 36/69							N/A
3270	Tot Acc Am 36/69							N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	b) Accumulated Amortization of Leasehold Improvements							
3160	GSF 36/69			N/A				
3161	#GSF 36/69			N/A				
3170	Switching 36/69	N/A		N/A		N/A		N/A
3171	#Switching 36/69	N/A		N/A		N/A		N/A
3180	Op Sys 36/69	N/A		N/A	N/A			N/A
3181	#Op Sys 36/69	N/A		N/A	N/A			N/A
3190	Transmission 36/69		N/A	N/A		N/A		
3191	#Transmission 36/69		N/A	N/A		N/A		
3200	IOT 36/69		N/A	N/A	N/A	N/A	N/A	
3201	#IOT 36/69		N/A	N/A	N/A	N/A	N/A	
3210	C&WF 36/69		N/A	N/A		N/A		
3211	#C&WF 36/69		N/A	N/A		N/A		
3220	Tot Lease Imp 36/69			N/A				
3230	Tot Tang Ass 36/69			N/A				
	2. Accumulated Amortization of Intangible Assets and Other Accumulated Amortization							
3240	Intangibles 36/69							
3241	#Intan Ass 36/69							
3250	Other 36/69							
3251	#Assd Inv 36/69							
3260	Tot Int/Oth 36/69							
3270	Tot Acc Am 36/69							

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	b) Accumulated Amortization of Leasehold Improvements			
3160	GSF 36/69			
3161	#GSF 36/69			
3170	Switching 36/69		N/A	
3171	#Switching 36/69		N/A	
3180	Op Sys 36/69		N/A	
3181	#Op Sys 36/69		N/A	
3190	Transmission 36/69		N/A	
3191	#Transmission 36/69		N/A	
3200	IOT 36/69		N/A	N/A
3201	#IOT 36/69		N/A	N/A
3210	C&WF 36/69		N/A	
3211	#C&WF 36/69		N/A	
3220	Tot Lease Imp 36/69			
3230	Tot Tang Ass 36/69			
	2. Accumulated Amortization of Intangible Assets and Other Accumulated			
3240	Intangibles 36/69			
3241	#Intan Ass 36/69			
3250	Other 36/69			
3251	#Assd Inv 36/69			
3260	Tot Int/Oth 36/69			
3270	Tot Acc Am 36/69			

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
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TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	D. Net Current Deferred Operating Income Taxes							
3280	GSF 36/69							N/A
3281	#GSF 36/69							N/A
3290	Switching 36/69				N/A	N/A	N/A	N/A
3291	#Switching 36/69				N/A	N/A	N/A	N/A
3300	Op Sys 36/69				N/A	N/A	N/A	N/A
3301	#Op Sys 36/69				N/A	N/A	N/A	N/A
3310	Transmission 36/69					N/A		N/A
3311	#Transmission 36/69					N/A		N/A
3320	IOT 36/69							N/A
3321	#IOT 36/69							N/A
3330	C&WF 36/69					N/A		N/A
3331	#C&WF 36/69					N/A		N/A
3340	Tot Net Cur 36/69							N/A
	E. Net NonCurrent Deferred Operating Income Taxes							
3350	GSF 36/69							N/A
3351	#GSF 36/69							N/A
3360	Switching 36/69				N/A	N/A	N/A	N/A
3361	#Switching 36/69				N/A	N/A	N/A	N/A
3370	Op Sys 36/69				N/A	N/A	N/A	N/A
3371	#Op Sys 36/69				N/A	N/A	N/A	N/A
3380	Transmission 36/69					N/A		N/A
3381	#Transmission 36/69					N/A		N/A
3390	IOT 36/69							N/A
3391	#IOT 36/69							N/A
3400	C&WF 36/69					N/A		N/A
3401	#C&WF 36/69					N/A		N/A
3410	Tot Net NonC 36/69							N/A
	F. Other Jurisdictional Liabilities and Deferred Credits and Reserve Adjustments							
3420	Oth Juris L&DCrs 36			N/A	N/A	N/A	N/A	N/A
3421	Reserve Adj 36/69	N/A	N/A					N/A
3430	Tot Res & Def 36/69							N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
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PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	EqualAccess (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	D. Net Current Deferred Operating Income Taxes							
3280	GSF 36/69			N/A				
3281	#GSF 36/69			N/A				
3290	Switching 36/69	N/A		N/A		N/A		N/A
3291	#Switching 36/69	N/A		N/A		N/A		N/A
3300	Op Sys 36/69	N/A		N/A	N/A			N/A
3301	#Op Sys 36/69	N/A		N/A	N/A			N/A
3310	Transmission 36/69		N/A	N/A		N/A		
3311	#Transmission 36/69		N/A	N/A		N/A		
3320	IOT 36/69		N/A	N/A	N/A	N/A	N/A	
3321	#IOT 36/69		N/A	N/A	N/A	N/A	N/A	
3330	C&WF 36/69		N/A	N/A		N/A		
3331	#C&WF 36/69		N/A	N/A		N/A		
3340	Tot Net Cur 36/69			N/A				
	E. Net NonCurrent Deferred Operating Income Taxes							
3350	GSF 36/69			N/A				
3351	#GSF 36/69			N/A				
3360	Switching 36/69	N/A		N/A		N/A		N/A
3361	#Switching 36/69	N/A		N/A		N/A		N/A
3370	Op Sys 36/69	N/A		N/A	N/A			N/A
3371	#Op Sys 36/69	N/A		N/A	N/A			N/A
3380	Transmission 36/69		N/A	N/A		N/A		
3381	#Transmission 36/69		N/A	N/A		N/A		
3390	IOT 36/69		N/A	N/A	N/A	N/A	N/A	
3391	#IOT 36/69		N/A	N/A	N/A	N/A	N/A	
3400	C&WF 36/69		N/A	N/A		N/A		
3401	#C&WF 36/69		N/A	N/A		N/A		
3410	Tot Net NonC 36/69			N/A				
	F. Other Jurisdictional Liabilities and Deferred Credits and Reserve Adjustments							
3420	Oth Juris L&DCrs 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
3421	Reserve Adj 36/69							
3430	Tot Res & Def 36/69							

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION X
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TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	D. Net Current Deferred Operating Income Taxes			
3280	GSF 36/69			
3281	#GSF 36/69			
3290	Switching 36/69		N/A	
3291	#Switching 36/69		N/A	
3300	Op Sys 36/69		N/A	
3301	#Op Sys 36/69		N/A	
3310	Transmission 36/69		N/A	
3311	#Transmission 36/69		N/A	
3320	IOT 36/69		N/A	N/A
3321	#IOT 36/69		N/A	N/A
3330	C&WF 36/69		N/A	
3331	#C&WF 36/69		N/A	
3340	Tot Net Cur 36/69			
	E. Net NonCurrent Deferred Operating Income Taxes			
3350	GSF 36/69			
3351	#GSF 36/69			
3360	Switching 36/69		N/A	
3361	#Switching 36/69		N/A	
3370	Op Sys 36/69		N/A	
3371	#Op Sys 36/69		N/A	
3380	Transmission 36/69		N/A	
3381	#Transmission 36/69		N/A	
3390	IOT 36/69		N/A	N/A
3391	#IOT 36/69		N/A	N/A
3400	C&WF 36/69		N/A	
3401	#C&WF 36/69		N/A	
3410	Tot Net NonC 36/69			
	F. Other Jurisdictional Liabilities and Deferred Credits and Reserve Adjustments			
3420	Oth Juris L&DCrs 36	N/A	N/A	N/A
3421	Reserve Adj 36/69			
3430	Tot Res & Def 36/69			

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STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	V. Operating Revenues and Certain Income Accounts							
	A. Operating Revenues							
	1. Basic Local Service Revenues							
4000	Local PL-Broad 36				N/A	N/A	N/A	N/A
4001	FX-CCSA 36				N/A	N/A	N/A	N/A
4002	Wideband Msg&TWX 36				N/A	N/A	N/A	N/A
4003	$MOU 36				N/A	N/A	N/A	N/A
4004	All Other 36				N/A	N/A	N/A	N/A
4005	Tot Bas Lcl 36/69				N/A	N/A	N/A	N/A
	2. Network Access Service Revenues							
4010	End User 36		N/A		N/A	N/A	N/A	N/A
4011	Switched Access 36		N/A		N/A	N/A	N/A	N/A
4012	Special Access 36		N/A		N/A	N/A	N/A	N/A
4013	State Access 36			N/A	N/A	N/A	N/A	N/A
4014	Tot Netwk Acc 36/69							N/A
	3. Long Distance Message Service Revenues							
4020	Wideband Msg&TWX 36				N/A	N/A	N/A	N/A
4021	$MOU 36				N/A	N/A	N/A	N/A
4022	LD PL-Broad 36				N/A	N/A	N/A	N/A
4023	Other LD Msg 36				N/A	N/A	N/A	N/A
4024	Tot LD Msg 36/69				N/A	N/A	N/A	N/A
	4. Miscellaneous Revenues							
4030	Directory 36			N/A	N/A	N/A	N/A	N/A
4031	Billing & Coll 36				N/A	N/A	N/A	N/A
4032	All Other Misc 36				N/A	N/A	N/A	N/A
4033	Tot Misc 36/69							N/A
	5. Uncollectible Revenues							
4040	Uncollectible 36/69							N/A
4050	Tot Rev 1s Unc36/69							N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	V. Operating Revenues and Certain Income Accounts							
	A. Operating Revenues							
	1. Basic Local Service Revenues							
4000	Local PL-Broad 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4001	FX-CCSA 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4002	Wideband Msg&TWX 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4003	$MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4004	All Other 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4005	Tot Bas Lcl 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	2. Network Access Service Revenues							
4010	End User 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4011	Switched Access 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4012	Special Access 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4013	State Access 36	N/A		N/A	N/A	N/A	N/A	N/A
4014	Tot Netwk Acc 36/69							
	3. Long Distance Message Service Revenues							
4020	Wideband Msg&TWX 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4021	$MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4022	LD PL-Broad 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4023	Other LD Msg 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4024	Tot LD Msg 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	4. Miscellaneous Revenues							
4030	Directory 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4031	Billing & Coll 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4032	All Other Misc 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4033	Tot Misc 36/69			N/A				
	5. Uncollectible Revenues							
4040	Uncollectible 36/69							
4050	Tot Rev ls Unc36/69							

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TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)

V. Operating Revenues and Certain Income Accounts

A. Operating Revenues

1. Basic Local Service Revenues

4000	Local PL-Broad 36	N/A	N/A	N/A
4001	FX-CCSA 36	N/A	N/A	N/A
4002	Wideband Msg&TWX 36	N/A	N/A	N/A
4003	#MOU 36	N/A	N/A	N/A
4004	All Other 36	N/A	N/A	N/A
4005	Tot Bas Lcl 36/69	N/A	N/A	N/A

2. Network Access Service Revenues

4010	End User 36	N/A	N/A	N/A
4011	Switched Access 36	N/A	N/A	N/A
4012	Special Access 36	N/A	N/A	N/A
4013	State Access 36	N/A	N/A	N/A
4014	Tot Netwk Acc 36/69		N/A	N/A

3. Long Distance Message Service Revenues

4020	Wideband Msg&TWX 36	N/A	N/A	N/A
4021	#MOU 36	N/A	N/A	N/A
4022	LD PL-Broad 36	N/A	N/A	N/A
4023	Other LD Msg 36	N/A	N/A	N/A
4024	Tot LD Msg 36/69	N/A	N/A	

4. Miscellaneous Revenues

4030	Directory 36	N/A	N/A	N/A
4031	Billing & Coll 36	N/A	N/A	N/A
4032	All Other Misc 36	N/A	N/A	N/A
4033	Tot Misc 36/69			

5. Uncollectible Revenues

4040	Uncollectible 36/69			
4050	Tot Rev ls Unc36/69			

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	B. Certain Income Accounts							
	1. Other Operating Income and Expenses							
4060	FX Different 36				N/A	N/A	N/A	N/A
4061	Direct All Other 36				N/A	N/A	N/A	N/A
4062	All Other 36				N/A	N/A	N/A	N/A
4063	#TPIS 36				N/A	N/A	N/A	N/A
4064	Tot Oth OpInc 69	N/A	N/A					N/A
4065	#Combined Inv 69	N/A	N/A					N/A
4066	Tot Oth OpInc 36/69							N/A
	2. Non-Operating Income and Expenses							
4070	AFUDC 36				N/A	N/A	N/A	N/A
4071	#Long Term PUC 36				N/A	N/A	N/A	N/A
4072	Soc/Comm 36				N/A	N/A	N/A	N/A
4073	#Corp Op Exp 36				N/A	N/A	N/A	N/A
4074	Tot NonOp Inc 69	N/A	N/A					N/A
4075	#Combined Inv 69	N/A	N/A					N/A
4076	Tot NonOp Inc 36/69							N/A
	3. Interest and Related Items							
4080	Int&Rel Items 36/69							N/A
4081	#Cap Leases 36				N/A	N/A	N/A	N/A
4082	#Combined Inv 69	N/A	N/A					N/A
	4. Extraordinary Items							
4090	Extra Items 36/69							N/A
	5. Income Effect of Jurisdictional Ratemaking Differences							
4100	Inc Effect 36			N/A	N/A	N/A	N/A	N/A
4110	Tot CIE 36/69							N/A
4120	Tot Rev Ls IEF36/69							N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	EqualAccess (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	B. Certain Income Accounts							
	1. Other Operating Income and Expenses							
4060	FX Different 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4061	Direct All Other 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4062	All Other 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4063	#TPIS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4064	Tot Oth OpInc 69							
4065	#Combined Inv 69							
4066	Tot Oth OpInc 36/69							
	2. Non-Operating Income and Expenses							
4070	AFUDC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4071	#Long Term PUC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4072	Soc/Comm 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4073	#Corp Op Exp 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4074	Tot NonOp Inc 69							
4075	#Combined Inv 69							
4076	Tot NonOp Inc 36/69							
	3. Interest and Related Items							
4080	Int&Rel Items 36/69							
4081	#Cap Leases 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4082	#Combined Inv 69							
	4. Extraordinary Items							
4090	Extra Items 36/69							
	5. Income Effect of Jurisdictional Ratemaking Differences							
4100	Inc Effect 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
4110	Tot CIE 36/69							
4120	Tot Rev LsIEF 36/69							

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	B. Certain Income Accounts			
	1. Other Operating Income and Expenses			
4060	FX Different 36	N/A	N/A	N/A
4061	Direct All Other 36	N/A	N/A	N/A
4062	All Other 36	N/A	N/A	N/A
4063	#TPIS 36	N/A	N/A	N/A
4064	Tot Oth OpInc 69			
4065	#Combined Inv 69			
4066	Tot Oth OpInc 36/69			
	2. Non-Operating Income and Expenses			
4070	AFUDC 36	N/A	N/A	N/A
4071	#Long Term PUC 36	N/A	N/A	N/A
4072	Soc/Comm 36	N/A	N/A	N/A
4073	#Corp Op Exp 36	N/A	N/A	N/A
4074	Tot NonOp Inc 69			
4075	#Combined Inv 69			
4076	Tot NonOp Inc 36/69			
	3. Interest and Related Items			
4080	Int&Rel Items 36/69			
4081	#Cap Leases 36	N/A	N/A	N/A
4082	#Combined Inv 69			
	4. Extraordinary Items			
4090	Extra Items 36/69			
	5. Income Effect of Jurisdictional Ratemaking Differences			
4100	Inc Effect 36	N/A	N/A	N/A
4110	Tot CIE 36/69			
4120	Tot Rev LsIEF 36/69			

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line Pay (e)	Inside Wire (f)	BFP (g)	CPE (h)
	VI. Operating Expenses and Taxes							
	A. Plant Specific Operating Expenses							
	1. Network Support and General Support Expenses							
5000	Network Supp 36/69							N/A
5001	#GSF 36				N/A	N/A	N/A	N/A
5002	#Comb Inv 69	N/A	N/A					N/A
5010	General Supp 36/69							N/A
5011	#GSF 36				N/A	N/A	N/A	N/A
5012	#GSF Inv 69	N/A	N/A					N/A
5013	Tot Sup 36/69							N/A
	2. Central Office Expenses							
5020	Direct PL 36				N/A	N/A	N/A	N/A
5021	Direct Message 36				N/A	N/A	N/A	N/A
5022	CO Exp 36				N/A	N/A	N/A	N/A
5023	#COE Inv 36				N/A	N/A	N/A	N/A
5024	CO Exp 69	N/A	N/A			N/A		N/A
5025	#COE Inv 69	N/A	N/A			N/A		N/A
5026	Tot CO Exp 36/69					N/A		N/A
	3. IOT Expenses							
	a) Other IOT Expenses							
	Part 36 Detail							
5030	Oth Less Coinlss 36				N/A	N/A	N/A	N/A
5031	#LAF 36 %				N/A	N/A	N/A	N/A
5032	Coinless Pay 36				N/A	N/A	N/A	N/A
5033	#LEC MOU 36				N/A	N/A	N/A	N/A
	Part 69 Detail							
5040	Tot Oth IOT 69	N/A	N/A					N/A
5041	#IOT Inv 69	N/A	N/A					N/A
5042	Tot Oth IOT 36/69							N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	EqualAccess (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	VI. Operating Expenses and Taxes							
	A. Plant Specific Operating Expenses							
	1. Network Support and General Support Expenses							
5000	Network Supp 36/69							
5001	#GSF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5002	#Comb Inv 69							
5010	General Supp 36/69			N/A				
5011	#GSF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5012	#GSF Inv 69			N/A				
5013	Tot Sup 36/69							
	2. Central Office Expenses							
5020	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5021	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5022	CO Exp 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5023	#COE Inv 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5024	CO Exp 69			N/A				
5025	#COE Inv 69			N/A				
5026	Tot CO Exp 36/69			N/A				
	3. IOT Expenses							
	a) Other IOT Expenses							
	Part 36 Detail							
5030	Oth Less Coinlss 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5031	#LAF 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5032	Coinless Pay 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5033	#LEC MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Part 69 Detail							
5040	Tot Oth IOT 69		N/A	N/A	N/A	N/A	N/A	
5041	#IOT Inv 69		N/A	N/A	N/A	N/A	N/A	
5042	Tot Oth IOT 36/69		N/A	N/A	N/A	N/A	N/A	

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
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TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)

VI. Operating Expenses and Taxes

A. Plant Specific Operating Expenses

1. Network Support and General Support Expenses

5000	Network Supp 36/69			
5001	#GSF 36	N/A	N/A	N/A
5002	#Comb Inv 69			
5010	General Supp 36/69			
5011	#GSF 36	N/A	N/A	N/A
5012	#GSF Inv 69			
5013	Tot Sup 36/69			

2. Central Office Expenses

5020	Direct PL 36	N/A	N/A	N/A
5021	Direct Message 36	N/A	N/A	N/A
5022	CO Exp 36	N/A	N/A	N/A
5023	#COE Inv 36	N/A	N/A	N/A
5024	CO Exp 69		N/A	
5025	#COE Inv 69		N/A	
5026	Tot CO Exp 36/69		N/A	

3. IOT Expenses

a) Other IOT Expenses

Part 36 Detail

5030	Oth Less Coinlss 36	N/A	N/A	N/A
5031	#LAF 36 %	N/A	N/A	N/A
5032	Coinless Pay 36	N/A	N/A	N/A
5033	#LEC MOU 36	N/A	N/A	N/A

Part 69 Detail

5040	Tot Oth IOT 69		N/A	N/A
5041	#IOT Inv 69		N/A	N/A
5042	Tot Oth IOT 36/69		N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	b) Customer Premises Equipment Expenses							
5050	New CPE 36			N/A	N/A	N/A	N/A	N/A
5060	Tot IOT Exp 36/69							N/A
	4. C&WF Expenses							
5070	Direct PL 36				N/A	N/A	N/A	N/A
5071	Direct Message 36				N/A	N/A	N/A	N/A
5072	C&WF 36				N/A	N/A	N/A	N/A
5073	#C&WF Inv 36				N/A	N/A	N/A	N/A
5074	C&WF 69	N/A	N/A			N/A		N/A
5075	#C&WF Inv 69	N/A	N/A			N/A		N/A
5076	Tot C&WF Exp 36/69							N/A
5080	Tot Plt Spec 36/69							N/A
	B. Plant Non-Specific Operating Expenses							
	1. Other Property Plant and Equipment Expenses							
6000	Other PP&E 36/69							N/A
6001	#TPIS 36				N/A	N/A	N/A	N/A
6002	#COE/IOT/C&WF 69	N/A	N/A					N/A
	2. Network Operations and Access Expenses							
6010	Network Oper 36/69							N/A
6011	#COE/IOT/C&WF 36/69							N/A
6012	Access 36/69				N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Equal Access (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	b) Customer Premises Equipment Expenses							
5050	New CPE 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5060	Tot IOT Exp 36/69		N/A	N/A	N/A	N/A	N/A	
	4. C&WF Expenses							
5070	Direct PL 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5071	Direct Message 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5072	C&WF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5073	#C&WF Inv 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
5074	C&WF 69		N/A	N/A		N/A		
5075	#C&WF Inv 69		N/A	N/A		N/A		
5076	Tot C&WF Exp 36/69		N/A	N/A		N/A		
5080	Tot Plt Spec 36/69			N/A				
	B. Plant Non-Specific Operating Expenses							
	1. Other Property Plant and Equipment Expenses							
6000	Other PP&E 36/69			N/A				
6001	#TPIS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
6002	#COE/IOT/C&WF 69			N/A				
	2. Network Operations and Access Expenses							
6010	Network Oper 36/69			N/A				
6011	#COE/IOT/C&WF 36/69			N/A				
6012	Access 36/69	N/A	N/A	N/A	N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	b) Customer Premises Equipment Expenses			
5050	New CPE 36	N/A	N/A	N/A
5060	Tot IOT Exp 36/69		N/A	N/A
	4. C&WF Expenses			
5070	Direct PL 36	N/A	N/A	N/A
5071	Direct Message 36	N/A	N/A	N/A
5072	C&WF 36	N/A	N/A	N/A
5073	#C&WF Inv 36	N/A	N/A	N/A
5074	C&WF 69		N/A	
5075	#C&WF Inv 69		N/A	
5076	Tot CW&F Exp 36/69		N/A	
5080	Tot Plt Spec 36/69			
	B. Plant Non-Specific Operating Expenses			
	1. Other Property Plant and Equipment Expenses			
6000	Other PP&E 36/69	-	N/A	
6001	#TPIS 36	N/A	N/A	N/A
6002	#COE/IOT/C&WF 69		N/A	
	2. Network Operations and Access Expenses			
6010	Network Oper 36/69		N/A	
6011	#COE/IOT/C&WF 36/69		N/A	
6012	Access 36/69	N/A	N/A	

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PERIOD: From mmm yyyy To mmm yyyy
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TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	3. Depreciation and Amortization Expenses							
	a) Depreciation and Amortization Expenses of Telecommunications Plant in Service							
6020	GSF 36/69							N/A
6021	#GSF 36/69							N/A
6030	Switching 36/69				N/A	N/A	N/A	N/A
6031	#Switching 36/69				N/A	N/A	N/A	N/A
6040	Op Sys 36/69				N/A	N/A	N/A	N/A
6041	#Op Sys 36/69				N/A	N/A	N/A	N/A
6050	Transmission 36/69					N/A		N/A
6051	#Transmission 36/69					N/A		N/A
6060	IOT 36/69							N/A
6061	#IOT 36/69							N/A
6070	C&WF 36/69					N/A		N/A
6071	#C&WF 36/69					N/A		N/A
6080	PHFTU 36/69							N/A
6081	#PHFTU 36/69							N/A
6090	Tot Dep Plant 36/69							N/A
	b) Amortization Expenses of Tangible Assets							
	(1) Amortization Expenses of Capital Leases							
6100	GSF 36/69							N/A
6101	#GSF 36/69							N/A
6110	Switching 36/69				N/A	N/A	N/A	N/A
6111	#Switching 36/69				N/A	N/A	N/A	N/A
6120	Op Sys 36/69				N/A	N/A	N/A	N/A
6121	#Op Sys 36/69				N/A	N/A	N/A	N/A
6130	Transmission 36/69					N/A		N/A
6131	#Transmission 36/69					N/A		N/A
6140	IOT 36/69							N/A
6141	#IOT 36/69							N/A
6150	C&WF 36/69					N/A		N/A
6151	#C&WF 36/69					N/A		N/A
6160	Tot Cap Lease 36/69							N/A

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TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Equal Access (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	3. Depreciation and Amortization Expenses							
	a) Depreciation and Amortization Expenses of Telecommunications Plant in Service							
6020	GSF 36/69			N/A				
6021	#GSF 36/69			N/A				
6030	Switching 36/69	N/A		N/A		N/A		N/A
6031	#Switching 36/69	N/A		N/A		N/A		N/A
6040	Op Sys 36/69	N/A		N/A	N/A			N/A
6041	#Op Sys 36/69	N/A		N/A	N/A			N/A
6050	Transmission 36/69		N/A	N/A		N/A		
6051	#Transmission 36/69		N/A	N/A		N/A		
6060	IOT 36/69		N/A	N/A	N/A	N/A	N/A	
6061	#IOT 36/69		N/A	N/A	N/A	N/A	N/A	
6070	C&WF 36/69		N/A	N/A		N/A		
6071	#C&WF 36/69		N/A	N/A		N/A		
6080	PHFTU 36/69							
6081	#PHFTU 36/69							
6090	Tot Dep Plant 36/69							
	b) Amortization Expenses of Tangible Assets							
	(1) Amortization Expenses of Capital Leases							
6100	GSF 36/69			N/A				
6101	#GSF 36/69			N/A				
6110	Switching 36/69	N/A		N/A		N/A		N/A
6111	#Switching 36/69	N/A		N/A		N/A		N/A
6120	Op Sys 36/69	N/A		N/A	N/A			N/A
6121	#Op Sys 36/69	N/A		N/A	N/A			N/A
6130	Transmission 36/69		N/A	N/A		N/A		
6131	#Transmission 36/69		N/A	N/A		N/A		
6140	IOT 36/69		N/A	N/A	N/A	N/A	N/A	
6141	#IOT 36/69		N/A	N/A	N/A	N/A	N/A	
6150	C&WF 36/69		N/A	N/A		N/A		
6151	#C&WF 36/69		N/A	N/A		N/A		
6160	Tot Cap Lease 36/69			N/A				

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	3. Depreciation and Amortization Expenses			
	a) Depreciation and Amortization Expenses of Telecommunications Plant in Service			
6020	GSF 36/69			
6021	#GSF 36/69			
6030	Switching 36/69		N/A	
6031	#Switching 36/69		N/A	
6040	Op Sys 36/69		N/A	
6041	#Op Sys 36/69		N/A	
6050	Transmission 36/69		N/A	
6051	#Transmission 36/69		N/A	
6060	IOT 36/69		N/A	N/A
6061	#IOT 36/69		N/A	N/A
6070	C&WF 36/69		N/A	
6071	#C&WF 36/69		N/A	
6080	PHFTU 36/69			
6081	#PHFTU 36/69			
6090	Tot Dep Plant 36/69			
	b) Amortization Expenses of Tangible Assets			
	(1) Amortization Expenses of Capital Leases			
6100	GSF 36/69			
6101	#GSF 36/69			
6110	Switching 36/69		N/A	
6111	#Switching 36/69		N/A	
6120	Op Sys 36/69		N/A	
6121	#Op Sys 36/69		N/A	
6130	Transmission 36/69		N/A	
6131	#Transmission 36/69		N/A	
6140	IOT 36/69		N/A	N/A
6141	#IOT 36/69		N/A	N/A
6150	C&WF 36/69		N/A	
6151	#C&WF 36/69		N/A	
6160	Tot Cap Lease 36/69			

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line Pay (e)	Common Line Inside Wire (f)	Common Line BFP (g)	Common Line CPE (h)
	(2) Amortization Expenses of Leasehold Improvements							
6170	GSF 36/69							N/A
6171	#GSF 36/69							N/A
6180	Switching 36/69				N/A	N/A	N/A	N/A
6181	#Switching 36/69				N/A	N/A	N/A	N/A
6190	Op Sys 36/69				N/A	N/A	N/A	N/A
6191	#Op Sys 36/69				N/A	N/A	N/A	N/A
6200	Transmission 36/69					N/A		N/A
6201	#Transmission 36/69					N/A		N/A
6210	IOT 36/69							N/A
6211	#IOT 36/69							N/A
6220	C&WF 36/69					N/A		N/A
6221	#C&WF 36/69					N/A		N/A
6230	Tot Leas Imp 36/69							N/A
6240	Tot Am Tang 36/69							N/A
	(3) Other Depreciation and Amortization Expenses							
6250	Intangibles 36/69							N/A
6251	#Intan Ass 36/69							N/A
6252	Other 36/69							N/A
6253	#Assd Inv 36/69							N/A
6254	Tot Other 36/69							N/A
6260	Tot Dep/Amort 36/69							N/A
6270	Tot Pl NonSp 36/69							N/A
	C. Customer Operations Expenses							
	1. Marketing Expenses							
7000	Marketing 36/69							N/A
7001	#Curr Bill Anal 36				N/A	N/A	N/A	N/A
7002	#Combined Inv 69	N/A	N/A					N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Traffic Sensitive: EqualAccess (k)	Traffic Sensitive: Transport (l)	Traffic Sensitive: Information (m)	Total Traffic Sen (n)	Special Access (o)
	(2) Amortization Expenses of Leasehold Improvements							
6170	GSF 36/69			N/A				
6171	#GSF 36/69			N/A				
6180	Switching 36/69	N/A		N/A		N/A		N/A
6181	#Switching 36/69	N/A		N/A		N/A		N/A
6190	Op Sys 36/69	N/A		N/A	N/A			N/A
6191	#Op Sys 36/69	N/A		N/A	N/A			N/A
6200	Transmission 36/69		N/A	N/A		N/A		
6201	#Transmission 36/69		N/A	N/A		N/A		
6210	IOT 36/69		N/A	N/A	N/A	N/A	N/A	
6211	#IOT 36/69		N/A	N/A	N/A	N/A	N/A	
6220	C&WF 36/69		N/A	N/A		N/A		
6221	#C&WF 36/69		N/A	N/A		N/A		
6230	Tot Leas Imp 36/69			N/A				
6240	Tot Am Tang 36/69			N/A				
	(3) Other Depreciation and Amortization Expenses							
6250	Intangibles 36/69							
6251	#Intan Ass 36/69							
6252	Other 36/69							
6253	#Assd Inv 36/69							
6254	Tot Other 36/69							
6260	Tot Dep/Amort 36/69							
6270	Tot Pl NonSp 36/69							
	C. Customer Operations Expenses							
	1. Marketing Expenses							
7000	Marketing 36/69							
7001	#Curr Bill Anal 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7002	#Combined Inv 69							

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	(2) Amortization Expenses of Leasehold Improvements			
6170	GSF 36/69			
6171	#GSF 36/69			
6180	Switching 36/69		N/A	
6181	#Switching 36/69		N/A	
6190	Op Sys 36/69		N/A	
6191	#Op Sys 36/69		N/A	
6200	Transmission 36/69		N/A	
6201	#Transmission 36/69		N/A	
6210	IOT 36/69		N/A	N/A
6211	#IOT 36/69		N/A	N/A
6220	C&WF 36/69		N/A	
6221	#C&WF 36/69		N/A	
6230	Tot Leas Imp 36/69			
6240	Tot Am Tang 36/69			
	(3) Other Depreciation and Amortization Expenses			
6250	Intangibles 36/69			
6251	#Intan Ass 36/69			
6252	Other 36/69			
6253	#Assd Inv 36/69			
6254	Tot Other 36/69			
6260	Tot Dep/Amort 36/69			
6270	Tot Pl NonSp 36/69			
	C. Customer Operations Expenses			
	1. Marketing Expenses			
7000	Marketing 36/69			
7001	#Curr Bill Anal 36	N/A	N/A	N/A
7002	#Combined Inv 69			

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	2. Services Expenses							
	a) Telephone Operator Services Expenses							
	Part 36 Detail							
7010	Call Completion 36				N/A	N/A	N/A	N/A
7011	#WSWS 36				N/A	N/A	N/A	N/A
7020	Intercept 36				N/A	N/A	N/A	N/A
7021	#WSWS 36				N/A	N/A	N/A	N/A
7030	DA 36				N/A	N/A	N/A	N/A
7031	#WSWS 36				N/A	N/A	N/A	N/A
7040	Other 36				N/A	N/A	N/A	N/A
7041	#WSWS 36				N/A	N/A	N/A	N/A
	Part 69 Detail							
7050	Tel Op Direct 69	N/A	N/A		N/A	N/A	N/A	N/A
7051	Tel Op Alloc 69	N/A	N/A		N/A	N/A	N/A	N/A
7052	#WSWS 69	N/A	N/A		N/A	N/A	N/A	N/A
7060	Tot Tel Op 36/69				N/A	N/A	N/A	N/A
	b) Published Directory Listing Expenses							
7070	Classified Dir 36			N/A	N/A	N/A	N/A	N/A
7071	TWX Directory 36				N/A	N/A	N/A	N/A
7072	#TWX MOU 36				N/A	N/A	N/A	N/A
7073	Alpha/Traffic 36				N/A	N/A	N/A	N/A
7074	#Sub Line MOU 36				N/A	N/A	N/A	N/A
7075	For Directories 36				N/A	N/A	N/A	N/A
7076	Tot Pub Dir 36/69				N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Equal Access (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	2. Services Expenses							
	a) Telephone Operator Services Expenses							
	Part 36 Detail							
7010	Call Completion 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7011	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7020	Intercept 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7021	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7030	DA 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7031	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7040	Other 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7041	#WSWS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Part 69 Detail							
7050	Tel Op Direct 69	N/A		N/A	N/A			N/A
7051	Tel Op Alloc 69	N/A		N/A	N/A			N/A
7052	#WSWS 69	N/A		N/A	N/A			N/A
7060	Tot Tel Op 36/69	N/A		N/A	N/A			N/A
	b) Published Directory Listing Expenses							
7070	Classified Dir 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7071	TWX Directory 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7072	#TWX MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7073	Alpha/Traffic 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7074	#Sub Line MOU 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7075	For Directories 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7076	Tot Pub Dir 36/69	N/A	N/A	N/A	N/A			N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	2. Services Expenses			
	a) Telephone Operator Services Expenses			
	Part 36 Detail			
7010	Call Completion 36	N/A	N/A	N/A
7011	#WSWS 36	N/A	N/A	N/A
7020	Intercept 36	N/A	N/A	N/A
7021	#WSWS 36	N/A	N/A	N/A
7030	DA 36	N/A	N/A	N/A
7031	#WSWS 36	N/A	N/A	N/A
7040	Other 36	N/A	N/A	N/A
7041	#WSWS 36	N/A	N/A	N/A
	Part 69 Detail			
7050	Tel Op Direct 69		N/A	
7051	Tel Op Alloc 69		N/A	
7052	#WSWS 69		N/A	
7060	Tot Tel Op 36/69		N/A	
	b) Published Directory Listing Expenses			
7070	Classified Dir 36	N/A	N/A	N/A
7071	TWX Directory 36	N/A	N/A	N/A
7072	#TWX MOU 36	N/A	N/A	N/A
7073	Alpha/Traffic 36	N/A	N/A	N/A
7074	#Sub Line MOU 36	N/A	N/A	N/A
7075	For Directories 36	N/A	N/A	N/A
7076	Tot Pub Dir 36/69		N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	c) All Other Services Expenses							
	(1) Category 1 - Local Business Office Expenses							
	Part 36 Detail							
	(a) End User Service Order Processing Expenses							
7080	#Total WAC 36		N/A	N/A	N/A	N/A	N/A	N/A
7081	#Lcl Svc Or WAC 36			N/A	N/A	N/A	N/A	N/A
7082	#Presub WAC 36		N/A		N/A	N/A	N/A	N/A
7083	#Dir Ad WAC 36			N/A	N/A	N/A	N/A	N/A
7090	#State PL WAC 36			N/A	N/A	N/A	N/A	N/A
7085	#IS PL WAC 36		N/A		N/A	N/A	N/A	N/A
7086	#State Msg WAC 36			N/A	N/A	N/A	N/A	N/A
7087	#IS Msg WAC 36		N/A		N/A	N/A	N/A	N/A
7088	#TWX WAC 36		N/A	N/A	N/A	N/A	N/A	N/A
7089	Lcl Svc Or Proc 36			N/A	N/A	N/A	N/A	N/A
7090	Presub Svc Or 36		N/A		N/A	N/A	N/A	N/A
7091	Dir Ad Svc Or 36			N/A	N/A	N/A	N/A	N/A
7092	PL & Special 36				N/A	N/A	N/A	N/A
7093	Message Toll 36				N/A	N/A	N/A	N/A
7094	TWX 36				N/A	N/A	N/A	N/A
7095	#Bill TWX Rev 36				N/A	N/A	N/A	N/A
7096	Tot Svc Or Proc 36				N/A	N/A	N/A	N/A
	(b) End User Payment and Collection Expenses							
7100	#Tot Bill Rev 36		N/A	N/A	N/A	N/A	N/A	N/A
7101	#State PL Bl Rev 36			N/A	N/A	N/A	N/A	N/A
7102	#IS PL Bill Rev 36		N/A		N/A	N/A	N/A	N/A
7103	#St Msg Bill Rev 36			N/A	N/A	N/A	N/A	N/A
7104	#IS Msg Bill Rev 36		N/A		N/A	N/A	N/A	N/A
7105	#Local Bill Rev 36			N/A	N/A	N/A	N/A	N/A
7106	#TWX Bill Rev 36		N/A	N/A	N/A	N/A	N/A	N/A
7107	PL & Special 36				N/A	N/A	N/A	N/A
7108	Msg Toll 36				N/A	N/A	N/A	N/A
7109	Local 36			N/A	N/A	N/A	N/A	N/A
7110	TWX 36				N/A	N/A	N/A	N/A
7111	#Bill TWX Rev 36				N/A	N/A	N/A	N/A
7112	Tot EU Pay & Col 36				N/A	N/A	N/A	N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	EqualAccess (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)

c) All Other Services Expenses

(1) Category 1 - Local Business Office Expenses

Part 36 Detail

(a) End User Service Order Processing Expenses

7080	#Total WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7081	#Lcl Svc Or WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7082	#Presub WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7083	#Dir Ad WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7090	#State PL WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7085	#IS PL WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7086	#State Msg WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7087	#IS Msg WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7088	#TWX WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7089	Lcl Svc Or Proc 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7090	Presub Svc Or 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7091	Dir Ad Svc Or 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7092	PL & Special 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7093	Message Toll 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7094	TWX 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7095	#Bill TWX Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7096	Tot Svc Or Proc 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A

(b) End User Payment and Collection Expenses

7100	#Tot Bill Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7101	#State PL Bl Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7102	#IS PL Bill Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7103	#St Msg Bill Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7104	#IS Msg Bill Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7105	#Local Bill Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7106	#TWX Bill Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7107	PL & Special 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7108	Msg Toll 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7109	Local 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7110	TWX 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7111	#Bill TWX Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7112	Tot EU Pay & Col 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)

c) All Other Services Expenses

(1) Category 1 - Local Business Office Expenses

Part 36 Detail

(a) End User Service Order Processing Expenses

7080	#Total WAC 36	N/A	N/A	N/A
7081	#Lcl Svc Or WAC 36	N/A	N/A	N/A
7082	#Presub WAC 36	N/A	N/A	N/A
7083	#Dir Ad WAC 36	N/A	N/A	N/A
7090	#State PL WAC 36	N/A	N/A	N/A
7085	#IS PL WAC 36	N/A	N/A	N/A
7086	#State Msg WAC 36	N/A	N/A	N/A
7087	#IS Msg WAC 36	N/A	N/A	N/A
7088	#TWX WAC 36	N/A	N/A	N/A
7089	Lcl Svc Or Proc 36	N/A	N/A	N/A
7090	Presub Svc Or 36	N/A	N/A	N/A
7091	Dir Ad Svc Or 36	N/A	N/A	N/A
7092	PL & Special 36	N/A	N/A	N/A
7093	Message Toll 36	N/A	N/A	N/A
7094	TWX 36	N/A	N/A	N/A
7095	#Bill TWX Rev 36	N/A	N/A	N/A
7096	Tot Svc Or Proc 36	N/A	N/A	N/A

(b) End User Payment and Collection Expenses

7100	#Tot Bill Rev 36	N/A	N/A	N/A
7101	#State PL Bl Rev 36	N/A	N/A	N/A
7102	#IS PL Bill Rev 36	N/A	N/A	N/A
7103	#St Msg Bill Rev 36	N/A	N/A	N/A
7104	#IS Msg Bill Rev 36	N/A	N/A	N/A
7105	#Local Bill Rev 36	N/A	N/A	N/A
7106	#TWX Bill Rev 36	N/A	N/A	N/A
7107	PL & Special 36	N/A	N/A	N/A
7108	Msg Toll 36	N/A	N/A	N/A
7109	Local 36	N/A	N/A	N/A
7110	TWX 36	N/A	N/A	N/A
7111	#Bill TWX Rev 36	N/A	N/A	N/A
7112	Tot EU Pay & Col 36	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	(c) End User Billing Inquiry Expenses							
7120	#Tot WAC 36		N/A	N/A	N/A	N/A	N/A	N/A
7121	#State PL WAC 36			N/A	N/A	N/A	N/A	N/A
7122	#IS PL WAC 36		N/A		N/A	N/A	N/A	N/A
7123	#State Msg WAC 36			N/A	N/A	N/A	N/A	N/A
7124	#IS Msg WAC 36		N/A		N/A	N/A	N/A	N/A
7125	#TWX WAC 36		N/A	N/A	N/A	N/A	N/A	N/A
7126	#Other WAC 36			N/A	N/A	N/A	N/A	N/A
7127	PL & Special 36				N/A	N/A	N/A	N/A
7128	Msg Toll 36				N/A	N/A	N/A	N/A
7129	TWX 36				N/A	N/A	N/A	N/A
7130	#TWX Bill Rev 36				N/A	N/A	N/A	N/A
7131	Other 36			N/A	N/A	N/A	N/A	N/A
7132	Tot Bill Inq 36				N/A	N/A	N/A	N/A
	(d) Interexchange Carrier Service Order Processing Expenses							
7140	#Tot WAC 36		N/A	N/A	N/A	N/A	N/A	N/A
7141	#State PL WAC 36			N/A	N/A	N/A	N/A	N/A
7142	#IS PL WAC 36		N/A		N/A	N/A	N/A	N/A
7143	#St Switch WAC 36			N/A	N/A	N/A	N/A	N/A
7144	#IS Switch WAC 36		N/A		N/A	N/A	N/A	N/A
7145	#State B&C WAC 36			N/A	N/A	N/A	N/A	N/A
7146	#IS B&C WAC 36		N/A		N/A	N/A	N/A	N/A
7147	PL & Special 36				N/A	N/A	N/A	N/A
7148	Switched & Msg 36				N/A	N/A	N/A	N/A
7149	Billing & Coll 36				N/A	N/A	N/A	N/A
7150	Tot IC Svc Ord 36				N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Equal Access (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	(c) End User Billing Inquiry Expenses							
7120	#Tot WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7121	#State PL WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7122	#IS PL WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7123	#State Msg WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7124	#IS Msg WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7125	#TWX WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7126	#Other WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7127	PL & Special 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7128	Msg Toll 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7129	TWX 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7130	#TWX Bill Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7131	Other 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7132	Tot Bill Inq 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(d) Interexchange Carrier Service Order Processing Expenses							
7140	#Tot WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7141	#State PL WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7142	#IS PL WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7143	#St Switch WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7144	#IS Switch WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7145	#State B&C WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7146	#IS B&C WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7147	PL & Special 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7148	Switched & Msg 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7149	Billing & Coll 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7150	Tot IC Svc Ord 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION X
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 25.3 OF 30.3

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	(c) End User Billing Inquiry Expenses			
7120	#Tot WAC 36	N/A	N/A	N/A
7121	#State PL WAC 36	N/A	N/A	N/A
7122	#IS PL WAC 36	N/A	N/A	N/A
7123	#State Msg WAC 36	N/A	N/A	N/A
7124	#IS Msg WAC 36	N/A	N/A	N/A
7125	#TWX WAC 36	N/A	N/A	N/A
7126	#Other WAC 36	N/A	N/A	N/A
7127	PL & Special 36	N/A	N/A	N/A
7128	Msg Toll 36	N/A	N/A	N/A
7129	TWX 36	N/A	N/A	N/A
7130	#TWX Bill Rev 36	N/A	N/A	N/A
7131	Other 36	N/A	N/A	N/A
7132	Tot Bill Inq 36	N/A	N/A	N/A
	(d) Interexchange Carrier Service Order Processing Expenses			
7140	#Tot WAC 36	N/A	N/A	N/A
7141	#State PL WAC 36	N/A	N/A	N/A
7142	#IS PL WAC 36	N/A	N/A	N/A
7143	#St Switch WAC 36	N/A	N/A	N/A
7144	#IS Switch WAC 36	N/A	N/A	N/A
7145	#State B&C WAC 36	N/A	N/A	N/A
7146	#IS B&C WAC 36	N/A	N/A	N/A
7147	PL & Special 36	N/A	N/A	N/A
7148	Switched & Msg 36	N/A	N/A	N/A
7149	Billing & Coll 36	N/A	N/A	N/A
7150	Tot IC Svc Ord 36	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	(e) Interexchange Carrier Payment and Collection Expenses							
7160	#Tot Bill Rev 36		N/A	N/A	N/A	N/A	N/A	N/A
7161	#State PL Rev 36			N/A	N/A	N/A	N/A	N/A
7162	#IS PL Rev 36		N/A		N/A	N/A	N/A	N/A
7163	#St Switched Rev 36			N/A	N/A	N/A	N/A	N/A
7164	#IS Switched Rev 36		N/A		N/A	N/A	N/A	N/A
7165	#State B&C Rev 36			N/A	N/A	N/A	N/A	N/A
7166	#IS B&C Rev 36		N/A		N/A	N/A	N/A	N/A
7167	PL & Special 36				N/A	N/A	N/A	N/A
7168	Switched & Msg 36				N/A	N/A	N/A	N/A
7169	Billing & Coll 36				N/A	N/A	N/A	N/A
7170	Tot IC Pay & Col 36				N/A	N/A	N/A	N/A
	(f) Interexchange Carrier Billing Inquiry Expenses							
7180	#Tot WAC 36		N/A	N/A	N/A	N/A	N/A	N/A
7181	#State PL WAC 36			N/A	N/A	N/A	N/A	N/A
7182	#IS PL WAC 36		N/A		N/A	N/A	N/A	N/A
7183	#St Switch WAC 36			N/A	N/A	N/A	N/A	N/A
7190	#IS Switch WAC 36		N/A		N/A	N/A	N/A	N/A
7185	#State B&C WAC 36			N/A	N/A	N/A	N/A	N/A
7186	#IS B&C WAC 36		N/A		N/A	N/A	N/A	N/A
7187	PL & Special 36				N/A	N/A	N/A	N/A
7188	Switched & Msg 36				N/A	N/A	N/A	N/A
7189	Billing & Coll 36				N/A	N/A	N/A	N/A
7190	Tot IC Bill Ing 36				N/A	N/A	N/A	N/A
	(g) Coin Collection and Administration Expenses							
7200	Coin Coll & Adm 36				N/A	N/A	N/A	N/A
7201	#Rev Deposited 36				N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Equal Access (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	(e) Interexchange Carrier Payment and Collection Expenses							
7160	#Tot Bill Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7161	#State PL Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7162	#IS PL Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7163	#St Switched Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7164	#IS Switched Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7165	#State B&C Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7166	#IS B&C Rev 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7167	PL & Special 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7168	Switched & Msg 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7169	Billing & Coll 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7170	Tot IC Pay & Col 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(f) Interexchange Carrier Billing Inquiry Expenses							
7180	#Tot WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7181	#State PL WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7182	#IS PL WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7183	#St Switch WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7190	#IS Switch WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7185	#State B&C WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7186	#IS B&C WAC 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7187	PL & Special 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7188	Switched & Msg 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7189	Billing & Coll 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7190	Tot IC Bill Inq 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(g) Coin Collection and Administration Expenses							
7200	Coin Coll & Adm 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7201	#Rev Deposited 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	(e) Interexchange Carrier Payment and Collection Expenses			
7160	#Tot Bill Rev 36	N/A	N/A	N/A
7161	#State PL Rev 36	N/A	N/A	N/A
7162	#IS PL Rev 36	N/A	N/A	N/A
7163	#St Switched Rev 36	N/A	N/A	N/A
7164	#IS Switched Rev 36	N/A	N/A	N/A
7165	#State B&C Rev 36	N/A	N/A	N/A
7166	#IS B&C Rev 36	N/A	N/A	N/A
7167	PL & Special 36	N/A	N/A	N/A
7168	Switched & Msg 36	N/A	N/A	N/A
7169	Billing & Coll 36	N/A	N/A	N/A
7170	Tot IC Pay & Col 36	N/A	N/A	N/A
	(f) Interexchange Carrier Billing Inquiry Expenses			
7180	#Tot WAC 36	N/A	N/A	N/A
7181	#State PL WAC 36	N/A	N/A	N/A
7182	#IS PL WAC 36	N/A	N/A	N/A
7183	#St Switch WAC 36	N/A	N/A	N/A
7190	#IS Switch WAC 36	N/A	N/A	N/A
7185	#State B&C WAC 36	N/A	N/A	N/A
7186	#IS B&C WAC 36	N/A	N/A	N/A
7187	PL & Special 36	N/A	N/A	N/A
7188	Switched & Msg 36	N/A	N/A	N/A
7189	Billing & Coll 36	N/A	N/A	N/A
7190	Tot IC Bill Inq 36	N/A	N/A	N/A
	(g) Coin Collection and Administration Expenses			
7200	Coin Coll & Adm 36	N/A	N/A	N/A
7201	#Rev Deposited 36	N/A	N/A	N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State - (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	Part 69 Detail							
7202	EU Att to Co PL 69	N/A	N/A		N/A	N/A	N/A	N/A
7203	EU Att to Co Msg 69	N/A	N/A		N/A	N/A	N/A	N/A
7204	EU Att to IC PL 69	N/A	N/A		N/A	N/A	N/A	N/A
7205	EU Att to IC Msg 69	N/A	N/A		N/A	N/A	N/A	N/A
7206	EU SLC Bills 69	N/A	N/A		N/A	N/A		N/A
7207	EU Presub 69	N/A	N/A			N/A		N/A
7208	#Combined Inv 69	N/A	N/A					N/A
7209	EU TWX 69	N/A	N/A		N/A	N/A	N/A	N/A
7210	IC Att to PL 69	N/A	N/A		N/A	N/A	N/A	N/A
7211	IC Switch & Msg 69	N/A	N/A					N/A
7212	#Combined Inv 69	N/A	N/A					N/A
7213	IC B&C 69	N/A	N/A		N/A	N/A	N/A	N/A
7214	Coin Coll & Adm 69	N/A	N/A			N/A	N/A	N/A
7220	Tot Cat 1 36/69							N/A

(2) Category 2 - Customer Services Expenses (Revenue Accounting)

Part 36 Detail

(a) Message Processing Expenses

7230	#Tot Msgs 36		N/A	N/A	N/A	N/A	N/A	N/A
7231	#Toll Msgs 36		N/A	N/A	N/A	N/A	N/A	N/A
7232	#Local Msgs 36			N/A	N/A	N/A	N/A	N/A
7233	Toll Ticket Proc 36				N/A	N/A	N/A	N/A
7234	#Toll Msgs 36				N/A	N/A	N/A	N/A
7235	Local Msg Proc 36			N/A	N/A	N/A	N/A	N/A
7236	Tot Msg Proc 36				N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive Switching (j)	Traffic Sensitive EqualAccess (k)	Traffic Sensitive Transport (l)	Traffic Sensitive Information (m)	Total Traffic Sen (n)	Special Access (o)
	Part 69 Detail							
7202	EU Att to Co PL 69	N/A	N/A	N/A	N/A	N/A	N/A	
7203	EU Att to Co Msg 69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7204	EU Att to IC PL 69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7205	EU Att to IC Msg 69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7206	EU SLC Bills 69		N/A	N/A	N/A	N/A	N/A	N/A
7207	EU Presub 69			N/A		N/A		N/A
7208	#Combined Inv 69			N/A		N/A		N/A
7209	EU TWX 69	N/A	N/A	N/A	N/A	N/A	N/A	
7210	IC Att to PL 69	N/A	N/A	N/A	N/A	N/A	N/A	
7211	IC Switch & Msg 69			N/A		N/A	N/A	N/A
7212	#Combined Inv 69			N/A		N/A	N/A	N/A
7213	IC B&C 69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7214	Coin Coll & Adm 69		N/A	N/A	N/A	N/A	N/A	N/A
7220	Tot Cat 1 36/69			N/A		N/A		

(2) Category 2 - Customer Services Expenses (Revenue Accounting)

Part 36 Detail

(a) Message Processing Expenses

7230	#Tot Msgs 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7231	#Toll Msgs 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7232	#Local Msgs 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7233	Toll Ticket Proc 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7234	#Toll Msgs 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7235	Local Msg Proc 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7236	Tot Msg Proc 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	Part 69 Detail			
7202	EU Att to Co PL 69		N/A	N/A
7203	EU Att to Co Msg 69	N/A	N/A	
7204	EU Att to IC PL 69	N/A		N/A
7205	EU Att to IC Msg 69	N/A		N/A
7206	EU SLC Bills 69	N/A	N/A	N/A
7207	EU Presub 69		N/A	N/A
7208	#Combined Inv 69		N/A	N/A
7209	EU TWX 69		N/A	N/A
7210	IC Att to PL 69		N/A	N/A
7211	IC Switch & Msg 69		N/A	N/A
7212	#Combined Inv 69		N/A	N/A
7213	IC B&C 69	N/A		N/A
7214	Coin Coll & Adm 69		N/A	N/A
7220	Tot Cat 1 36/69			

(2) Category 2 - Customer Services Expenses (Revenue Accounting)

Part 36 Detail

(a) Message Processing Expenses

7230	#Tot Msgs 36	N/A	N/A	N/A
7231	#Toll Msgs 36	N/A	N/A	N/A
7232	#Local Msgs 36	N/A	N/A	N/A
7233	Toll Ticket Proc 36	N/A	N/A	N/A
7234	#Toll Msgs 36	N/A	N/A	N/A
7235	Local Msg Proc 36	N/A	N/A	N/A
7236	Tot Msg Proc 36	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	(b) Other Billing and Collecting Expenses							
	1990 Users							
7240	#Tot 1990 Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7241	#IS Msg Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7242	#IS PL Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7243	#IS TWX Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7244	#Exchange Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7245	#State Msg Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7246	#State PL Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7247	#Dir Ad Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7248	#State TWX Users 36		N/A	N/A	N/A	N/A	N/A	N/A
	1987 Users							
7250	#Tot 1987 Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7251	#IS Msg Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7252	#IS PL Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7253	#IS TWX Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7254	#Exchange Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7255	#State Msg Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7256	#State PL Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7257	#Dir Ad Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7258	#State TWX Users 36		N/A	N/A	N/A	N/A	N/A	N/A
7259	OB&C 36				N/A	N/A	N/A	N/A
7260	#Alloc Factor 36 %				N/A	N/A	N/A	N/A
	(c) Carrier Access Charge Billing and Collecting Expenses							
7270	Carrier Access 36				N/A	N/A	N/A	N/A
	Part 69 Detail							
7280	SLC 69	N/A	N/A		N/A	N/A		N/A
7281	Carrier Access 69	N/A	N/A		N/A	N/A	N/A	N/A
7282	#COE/IOT/C&WF 69	N/A	N/A		N/A	N/A	N/A	N/A
7283	All Other Cat 2 69	N/A	N/A		N/A	N/A	N/A	N/A
7290	Tot Cat 2 36/69	N/A	N/A		N/A	N/A		N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	Equal Access (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	(b) Other Billing and Collecting Expenses							
	1990 Users							
7240	#Tot 1990 Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7241	#IS Msg Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7242	#IS PL Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7243	#IS TWX Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7244	#Exchange Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7245	#State Msg Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7246	#State PL Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7247	#Dir Ad Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7248	#State TWX Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	1987 Users							
7250	#Tot 1987 Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7251	#IS Msg Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7252	#IS PL Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7253	#IS TWX Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7254	#Exchange Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7255	#State Msg Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7256	#State PL Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7257	#Dir Ad Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7258	#State TWX Users 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7259	OB&C 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7260	#Alloc Factor 36 %	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	(c) Carrier Access Charge Billing and Collecting Expenses							
7270	Carrier Access 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Part 69 Detail							
7280	SLC 69		N/A	N/A	N/A	N/A	N/A	N/A
7281	Carrier Access 69	N/A						
7282	#COE/IOT/C&WF 69	N/A						
7283	All Other Cat 2 69	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7290	Tot Cat 2 36/69							

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	(b) Other Billing and Collecting Expenses			
	1990 Users			
7240	#Tot 1990 Users 36	N/A	N/A	N/A
7241	#IS Msg Users 36	N/A	N/A	N/A
7242	#IS PL Users 36	N/A	N/A	N/A
7243	#IS TWX Users 36	N/A	N/A	N/A
7244	#Exchange Users 36	N/A	N/A	N/A
7245	#State Msg Users 36	N/A	N/A	N/A
7246	#State PL Users 36	N/A	N/A	N/A
7247	#Dir Ad Users 36	N/A	N/A	N/A
7248	#State TWX Users 36	N/A	N/A	N/A
	1987 Users			
7250	#Tot 1987 Users 36	N/A	N/A	N/A
7251	#IS Msg Users 36	N/A	N/A	N/A
7252	#IS PL Users 36	N/A	N/A	N/A
7253	#IS TWX Users 36	N/A	N/A	N/A
7254	#Exchange Users 36	N/A	N/A	N/A
7255	#State Msg Users 36	N/A	N/A	N/A
7256	#State PL Users 36	N/A	N/A	N/A
7257	#Dir Ad Users 36	N/A	N/A	N/A
7258	#State TWX Users 36	N/A	N/A	N/A
7259	OB&C 36	N/A	N/A	N/A
7260	#Alloc Factor 36 %	N/A	N/A	N/A
	(c) Carrier Access Charge Billing and Collecting Expenses			
7270	Carrier Access 36	N/A	N/A	N/A
	Part 69 Detail			
7280	SLC 69		N/A	N/A
7281	Carrier Access 69		N/A	N/A
7282	#COE/IOT/C&WF 69			
7283	All Other Cat 2 69	N/A		N/A
7290	Tot Cat 2 36/69			N/A

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	(3) Category 3 - All Other Customer Services Expenses							
7300	Oth Cust Svc 36/69							N/A
7301	#Tot Cat 1 & 2 36				N/A	N/A	N/A	N/A
7302	#Combined Exp 69	N/A	N/A					N/A
7310	Tot Cust Svc 36/69							N/A
7320	#Tot Cust Op 36/69							N/A
	D. Corporate Operations Expenses							
7330	EAS Settlements 36			N/A	N/A	N/A	N/A	N/A
7331	All Other 36/69							N/A
7332	#Big 3 Exp 36				N/A	N/A	N/A	N/A
7333	#Big 3 Exp 69	N/A	N/A					N/A
7334	Tot Corp Oper 36/69							N/A
	E. FCC Expense Adjustment							
7350	FCC Expense Adj 36	N/A	N/A					N/A
7351	Tot Oper Exp 36/69							N/A
	F. Operating Taxes							
	1. State and Local Taxes							
8000	St & Lcl Inc 36/69							N/A
8001	#Appr Tax Inc 36/69							N/A
8002	Direct Oth St&Lcl36				N/A	N/A	N/A	N/A
8003	All Oth St & Lcl 36				N/A	N/A	N/A	N/A
8004	#TPIS 36				N/A	N/A	N/A	N/A
8005	Tot Oth St & Lcl 69	N/A	N/A					N/A
8006	#Combined Inv 69	N/A	N/A					N/A
8007	Tot St&Lcl Tax36/69	N/A	N/A					N/A

FCC REPORT 43-04 | Approved by OMB
ARMIS ACCESS REPORT | 3060-0395
Expires 10/31/90
COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx | xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx | SUBMISSION X
PERIOD: From mmm yyyy To mmm yyyy | TABLE I
COSA: xxxx | PAGE 29.2 OF 30.3

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	EqualAccess (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	(3) Category 3 - All Other Customer Services Expenses							
7300	Oth Cust Svc 36/69							
7301	#Tot Cat 1 & 2 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7302	#Combined Exp 69							
7310	Tot Cust Svc 36/69							
7320	#Tot Cust Op 36/69							
	D. Corporate Operations Expenses							
7330	EAS Settlements 36							
7331	All Other 36/69							
7332	#Big 3 Exp 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
7333	#Big 3 Exp 69							
7334	Tot Corp Oper 36/69							
	E. FCC Expense Adjustment							
7350	FCC Expense Adj 36							
7351	Tot Oper Exp 36/69							
	F. Operating Taxes							
	1. State and Local Taxes							
8000	St & Lcl Inc 36/69							
8001	#Appr Tax Inc 36/69							
8002	Direct Oth St&Lcl36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
8003	All Oth St & Lcl 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
8004	#TPIS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
8005	Tot Oth St & Lcl 69							
8006	#Combined Inv 69							
8007	Tot St&Lcl Tax36/69							

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	(3) Category 3 - All Other Customer Services Expenses			
7300	Oth Cust Svc 36/69			
7301	#Tot Cat 1 & 2 36	N/A	N/A	N/A
7302	#Combined Exp 69			
7310	Tot Cust Svc 36/69			
7320	#Tot Cust Op 36/69			
	D. Corporate Operations Expenses			
7330	EAS Settlements 36	N/A	N/A	N/A
7331	All Other 36/69			
7332	#Big 3 Exp 36	N/A	N/A	
7333	#Big 3 Exp 69			
7334	Tot Corp Oper 36/69			
	E. FCC Expense Adjustment			
7350	FCC Expense Adj 36			
7351	Tot Oper Exp 36/69			
	F. Operating Taxes			
	1. State and Local Taxes			
8000	St & Lcl Inc 36/69			
8001	#Appr Tax Inc 36/69			
8002	Direct Oth St&Lcl36	N/A	N/A	N/A
8003	All Oth St & Lcl 36	N/A	N/A	N/A
8004	#TPIS 36	N/A	N/A	N/A
8005	Tot Oth St & Lcl 69			
8006	#Combined Inv 69			
8007	Tot St&Lcl Tax36/69			

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Subject to Separations (b)	State (c)	Interstate (d)	Common Line: Pay (e)	Common Line: Inside Wire (f)	Common Line: BFP (g)	Common Line: CPE (h)
	2. Federal Income Tax							
	a) Federal Income Tax Related Items							
8010	Fixed Charges 36/69						—	N/A
8011	#Net Invest 36				N/A	N/A	N/A	N/A
8012	#Combined Inv 69	N/A	N/A					N/A
8013	IRS Inc Adj 36/69							N/A
8014	FCC Inc Adj 36/69							N/A
8015	ITC Amort 36/69							N/A
8016	#TPIS 36				N/A	N/A	N/A	N/A
8017	#Combined Inv 69	N/A	N/A					N/A
8018	FCC ITC Adj 36/69							N/A
	b) Federal Income Tax							
8020	Fed Inc Tax 36/69							N/A
8021	#Appr Tax Inc 36/69							N/A
8030	Tot Oper Tax 36/69							N/A
	VII. Return Data							
8040	Average Net Invest	N/A	N/A					N/A
8041	Net Return	N/A	N/A					N/A
8042	Rate of Return %	N/A	N/A				—	N/A
8043	FCC Refund	N/A	N/A					N/A
8044	Net Return Inc Ref	N/A	N/A					N/A
8045	ROR Including Ref %	N/A	N/A					N/A
	VIII. Other Data							
9000	CCL-Transitional 69	N/A	N/A		N/A	N/A		N/A
9001	CCL-Long Term 69	N/A	N/A		N/A	N/A		N/A
9002	USF 36				N/A	N/A	N/A	N/A
9003	#Total Loop Cost 36		N/A	N/A	N/A	N/A	N/A	N/A
9004	#Work Loops 36		N/A	N/A	N/A	N/A	N/A	N/A
9005	#Cost Per Loop 36		N/A	N/A	N/A	N/A	N/A	N/A
9006	Lifeline Connec 36		N/A	N/A	N/A	N/A	N/A	N/A
9007	#Households 36		N/A	N/A	N/A	N/A	N/A	N/A
9008	#Discount Per HH 36		N/A	N/A	N/A	N/A	N/A	N/A
9009	#Def Int Per HH 36		N/A	N/A	N/A	N/A	N/A	N/A
9010	Tot Bill Acc Lines		N/A	N/A	N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Common Line (i)	Traffic Sensitive: Switching (j)	EqualAccess (k)	Transport (l)	Information (m)	Total Traffic Sen (n)	Special Access (o)
	2. Federal Income Tax							
	a) Federal Income Tax Related Items							
8010	Fixed Charges 36/69							
8011	#Net Invest 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
8012	#Combined Inv 69							
8013	IRS Inc Adj 36/69							
8014	FCC Inc Adj 36/69							
8015	ITC Amort 36/69							
8016	#TPIS 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
8017	#Combined Inv 69							
8018	FCC ITC Adj 36/69							
	b) Federal Income Tax							
8020	Fed Inc Tax 36/69							
8021	#Appr Tax Inc 36/69							
8030	Tot Oper Tax 36/69							
	VII. Return Data							
8040	Average Net Invest							
8041	Net Return							
8042	Rate of Return %							
8043	FCC Refund							
8044	Net Return Inc Ref							
8045	ROR Including Ref %							
	VIII. Other Data							
9000	CCL-Transitional 69		N/A	N/A	N/A	N/A	N/A	N/A
9001	CCL-Long Term 69		N/A	N/A	N/A	N/A	N/A	N/A
9002	USF 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
9003	#Total Loop Cost 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
9004	#Work Loops 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
9005	#Cost Per Loop 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
9006	Lifeline Connec 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
9007	#Households 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
9008	#Discount Per HH 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
9009	#Def Int Per HH 36	N/A	N/A	N/A	N/A	N/A	N/A	N/A
9010	Tot Bill Acc Lines	N/A	N/A	N/A	N/A	N/A	N/A	N/A

TABLE I - SEPARATIONS AND ACCESS TABLE
(Dollars in Thousands)

Row	Category (a)	Total Access (p)	Billing & Collection (q)	IX (r)
	2. Federal Income Tax			
	a) Federal Income Tax Related Items			
8010	Fixed Charges 36/69			
8011	#Net Invest 36	N/A	N/A	N/A
8012	#Combined Inv 69			
8013	IRS Inc Adj 36/69			
8014	FCC Inc Adj 36/69			
8015	ITC Amort 36/69			
8016	#TPIS 36	N/A	N/A	N/A
8017	#Combined Inv 69			
8018	FCC ITC Adj 36/69			
	b) Federal Income Tax			
8020	Fed Inc Tax 36/69			
8021	#Appr Tax Inc 36/69			
8030	Tot Oper Tax 36/69			
	VII. Return Data			
8040	Average Net Invest			
8041	Net Return			
8042	Rate of Return %			
8043	FCC Refund			
8044	Net Return Inc Ref			
8045	ROR Including Ref %			
	VIII. Other Data			
9000	CCL-Transitional 69		N/A	N/A
9001	CCL-Long Term 69		N/A	N/A
9002	USF 36	N/A	N/A	N/A
9003	#Total Loop Cost 36	N/A	N/A	N/A
9004	#Work Loops 36	N/A	N/A	N/A
9005	#Cost Per Loop 36	N/A	N/A	N/A
9006	Lifeline Connec 36	N/A	N/A	N/A
9007	#Households 36	N/A	N/A	N/A
9008	#Discount Per HH 36	N/A	N/A	N/A
9009	#Def Int Per HH 36	N/A	N/A	N/A
9010	Tot Bill Acc Lines	N/A	N/A	N/A

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

General Instructions

1. Items that need not be reported because they do not apply are designated by N/A. All other fields must be populated. If there are no data applicable to a given field, enter zero.

2. Reporting carriers must follow the specific instructions provided in the attached Column Descriptions and Row Instructions. In addition, carriers must follow the jurisdictional separations and access charge procedures set forth in Parts 36 and 69 of the Commission's Rules and referenced in the Row Instructions. Carriers must explain any deviations in footnotes. Do not include explanatory notes in the transmittal letter; such notes must be included in the Footnotes section of the filing as indicated in the attached Automated Report Specifications and Paper Report Specifications.

3. The general structure of this report is as follows. Amounts that a carrier allocates between jurisdictions and/or among access categories and elements are indicated on rows that are not indented. Those rows are followed by rows indicating the allocation factor used to allocate the preceding lines. All allocation factors are indented one position and are preceded by the symbol "#". Unless otherwise indicated, all allocation factors must be reported in terms of actual amounts (i.e., minutes, seconds, miles, dollars, conversation-minute-miles, revenues, actual contacts, users, revenues, etc.) rather than in percentages. All factors that must be reported as a percentage are followed by the symbol "%". All directly assigned amounts must be reported on rows that are not followed by an indented allocation factor.

4. When reporting investment amounts for Plant, Other Investment, and Reserves, carriers that perform annual separations studies must report annual investment data; carriers that perform monthly, quarterly, or semi-annual studies must provide average investment data. For example, carriers that perform quarterly studies must sum the data from the four studies and divide by four. When reporting Revenues, Expenses, Taxes, Return (except rate of return), and Revenue Requirement data, carriers must provide the total annual data or the sum of monthly, quarterly, or semi-annual studies. When reporting allocation factors, carriers must report data as follows: (1) usage factors, such as minutes, should be reported as total annual data or the sum of monthly, quarterly, or semi-annual studies; (2) expenses or revenues, when used as an allocation factor, should be reported as total annual data or the sum of monthly, quarterly, or semi-annual studies; (3) allocation factors such as weighted actual contacts should be reported as total annual data or the sum of monthly, quarterly, or semi-annual studies; (4) percentage allocation factors, such as the Loop Allocation Factor, should be reported as a weighted annual average; (5) terminations, users, and miles should be reported as a weighted annual average.

5. On the reporting form, each row description is followed by an indication that the data the carrier must enter apply to Part 36 or Part 69 or both. In cases in which the total interstate amount of the cost category is directly assigned pursuant to Part 69, the Part 69 data must be reported on the total row for that category as indicated in the row instructions for the total row. All Part 69 amounts for a cost category must equal the total of the amounts allocated to the interstate jurisdiction for that category.

6. All terms and abbreviations used in the report and instructions are defined in Section 69.2 of the Commission's Rules, the Glossary of the Separations Manual, Part 36 of the Commission's Rules, or in the attached Glossary of terms.

7. All dollar amounts must be rounded to the nearest thousand. Amounts of minutes or seconds must be rounded to the nearest million. All conversation-minute-miles and circuit miles must be rounded to the nearest million. All rate of return and other percentage amounts (e.g., Rate of Return Including Refund and Loop Allocation Factor amounts) must be entered in percent and must be rounded to 2 decimal places (e.g., 12 2/3 percent should be entered as 12.67). All other amounts must be rounded to the nearest thousand.

8. All data must be reported "as earned", i.e., after adjustments to prior periods and SNFA adjustments.

9. Standard accounting procedures must be applied in determining the nature of any entry (e.g., each Uncollectible Revenue item, a debit entry, shall be entered as a "positive" number unless the balance therein reported is a credit). Entries of a reverse or contrary character shall be indicated by the placing of a minus sign in the column immediately preceding the numeric data, e.g., use -4, NOT - 4 or (4).

COLUMN DESCRIPTIONS

Each column is a cost category, access element, or summary thereof, as specified in the Commission's Rules.

Column	Description
b.	Subject to Separations - This amount reflects that portion of each row that must be allocated between the state and interstate jurisdictions pursuant to Part 36 of the Commission's Rules.
c.	State - This amount reflects that portion of each row that is allocated to the state jurisdiction pursuant to Part 36 of the Commission's Rules. The cost of detariffed CPE shall be entered in this column pursuant to Section 36.142.
d.	Interstate - This amount reflects that portion of each row that is allocated to the interstate jurisdiction pursuant to Part 36 of the Commission's Rules. Common Line - These columns reflect those amounts that are assigned to the Common Line Access element pursuant to Part 69 of the Commission's Rules.
e.	Pay - This amount reflects that portion of each row applicable to Pay Telephone Common Line Access charges pursuant to Part 69 of the Commission's Rules.
f.	Inside Wire - This amount reflects that portion of each row applicable to Common Line Access charges associated with inside wire pursuant to Part 69 of the Commission's Rules.
g.	Base Factor Portion (BFP) - This amount reflects that portion of Common Line Access charges not assigned to Pay, CPE or Inside Wire pursuant to Part 69 of the Commission's Rules.
h.	Customer Premises Equipment (CPE) - This amount reflects that portion of each row applicable to CPE Common Line Access charges pursuant to Part 69 of the Commission's Rules.
i.	Total Common Line - The total of columns (e) through (h).

Traffic Sensitive - These columns reflect those amounts that are assigned to the Traffic Sensitive Access elements and subelements pursuant to Part 69 of the Commission's Rules.

j. Switching - This amount reflects that portion of each row applicable to the Local Switching Access element pursuant to Part 69 of the Commission's Rules.

k. Equal Access - This amount includes only that portion of each row assigned to equal access pursuant to Part 36 of the Commission's Rules.

l. Transport - This amount reflects that portion of each row applicable to the Transport Access element pursuant to Part 69 of the Commission's Rules.

m. Information - This amount reflects that portion of each row applicable to the Information Access element pursuant to Part 69 of the Commission's Rules.

n. Total Traffic Sensitive - The total of columns (j) through (m).

o. Special Access - This amount reflects that portion of each row applicable to the Special Access element pursuant to Part 69 of the Commission's Rules.

p. Total Access - The total of columns (i), (n) and (o).

q. Billing and Collection - This amount reflects that portion of each row applicable to Billing and Collection services pursuant to Part 69 of the Commission's Rules.

r. Interexchange (IX) - This amount reflects that portion of each row applicable to Interexchange services pursuant to Part 69 of the Commission's Rules.

I. Equal Access

Note: The first step in the separations process is the removal of equal access costs from the primary accounts. These costs include only initial, incremental expenditures for hardware, other equipment, presubscription, and other initial, incremental expenditures related directly to the provision of equal access and which expenditures would not be required to upgrade the capabilities of the office involved absent the provision of equal access. Equal access investment and expenses are limited to such expenditures for converting central offices that serve competitive interexchange carriers in cases in which there has been a bona fide request for conversion to equal access. See Sections 36.191(a) and 36.421. In Section I of the ARMIS Access Report, carriers must report all costs that meet these criteria. In subsequent sections, carriers must report all other costs after removing equal access costs.

A. Telecommunications Property

10 Equal Access investment in General Support Facilities that is allocated pursuant to Section 36.191(c). See also Section 36.111.

11 Equal Access minutes-of-use used to allocate Equal Access investment in General Support Facilities pursuant to Section 36.191(c).

12 Equal Access investment in Category 2 Central Office Equipment (COE) that is allocated pursuant to Section 36.191(c). See also Section 36.124.

13 Equal Access minutes-of-use used to allocate Equal Access investment in Category 2 COE pursuant to Section 36.191(c).

14 Equal Access investment in Category 3 COE that is allocated pursuant to Section 36.191(c).

15 Equal Access minutes-of-use used to allocate Equal Access investment in Category 3 COE pursuant to Section 36.191(c).

16 Equal Access investment in other COE that is allocated pursuant to Section 36.191(c). See also Sections 36.123 and 36.126.

17 Equal Access minutes-of-use used to allocate Equal Access investment in Other COE pursuant to Section 36.191(c).

18 Equal Access investment in Information Origination/Termination equipment that is allocated pursuant to Section 36.191(c). See also Section 36.141.

19 Equal Access minutes-of-use used to allocate Equal Access investment in Information Origination/Termination equipment pursuant to Section 36.191(c).

20 Equal Access investment in Cable and Wire Facilities (C&WF) that is allocated pursuant to Section 36.191(c). See also Section 36.151(a).

21 Equal Access minutes-of-use used to allocate equal access investment in C&WF pursuant to Section 36.191(c).

22 Equal Access investment in Amortizable Assets that is allocated pursuant to Section 36.191(c). See also Section 36.161.

23 Equal Access minutes-of-use used to allocate equal access investment in Amortizable Assets pursuant to Section 36.191(c).

24 Equal Access investment in other plant that is allocated pursuant to Section 36.191(c). See also Sections 36.171 and 36.172.

25 Equal Access minutes-of-use used to allocate equal access investment in other plant pursuant to Section 36.191(c).

26 Material and Supplies that are associated with Equal Access and are allocated pursuant to Section 36.191(c). See also Section 36.181.

27 Equal Access minutes-of-use used to allocate associated Material and Supplies pursuant to Section 36.191(c).

28 Cash Working Capital that is associated with Equal Access and is allocated pursuant to Section 36.191(c). See also Section 36.182.

29 Equal Access minutes-of-use used to allocate associated Cash Working Capital pursuant to Section 36.191(c).

30 Total Equal Access Telecommunications Property, total of rows 10, 12, 14, 16, 18, 20, 24, 26, and 28.

B. Reserves and Deferrals

40 Accumulated depreciation that is related to Equal Access investment and is allocated pursuant to Section 36.191(c). See also Section 36.503(a).

41 Equal Access minutes-of-use used to allocated related accumulated depreciation pursuant to Section 36.191(c).

42 Accumulated amortization of Tangible and Intangible Assets and other accumulated amortization that is associated with Equal Access and is allocated pursuant to Section 36.191(c). See also Section 36.505(a).

43 Equal Access minutes-of-use used to allocate associated accumulated amortization pursuant to Section 36.191(c).

44 Net Current Deferred Operating Income Taxes that are associated with Equal Access and are allocated pursuant to Section 36.191(c). See also Section 36.506(a).

45 Equal Access minutes-of-use used to allocate associated Net Current Deferred Operating Income Taxes pursuant to Section 36.191(c).

46 Net Noncurrent Deferred Operating Income Taxes that are associated with Equal Access and are allocated pursuant to Section 36.191(c). See also Section 36.506(a).

47 Equal Access minutes-of-use used to allocate associated Net Noncurrent Deferred Operating Income Taxes pursuant to Section 36.191(c).

48 All Other reserves and deferrals that are associated with Equal Access and are allocated pursuant to Section 36.191(c). See also Section 36.507(a).

49 Equal Access minutes-of-use used to allocate all other associated reserves and deferrals pursuant to Section 36.191(c).

50 Total reserves and deferrals related to Equal Access, total of rows 30, 32, 34, 36, and 38.

51 Total Equal Access investment, total of rows 30, and 50, including amounts that are directly assigned pursuant to Section 69.308(a).

C. Operating Expenses

NOTE: Pursuant to National Exchange Carrier Association, 3 FCC Rcd 6042 (1988), members of the National Exchange Carrier Association traffic sensitive pool may treat equal access expenses as expenses incurred in the current year. Those expenses must be reported on rows 60 to 83. All other carriers capitalize those expenses and amortize them over an eight year period pursuant to Petition for Recovery of Equal Access and Network Reconfiguration Costs, 1 FCC Rcd 434, 437 (1986) (Equal Access Reconsideration Order). Those amounts must be reported on rows 90 to 93.

60 General Support Expenses that are associated with Equal Access and are allocated pursuant to Section 36.421(b). See also Section 36.111.

61 Equal Access minutes-of-use used to allocate associated General Support Expenses pursuant to Section 36.421(b). See also Section 36.111.

62 Network Support Expenses that are associated with Equal Access and are allocated pursuant to Section 36.421(b). See also Section 36.111.

63 Equal Access minutes-of-use used to allocate associated Network Support Expenses that are related to Equal Access pursuant to Section 36.421(b).

64 Central Office Expenses that are associated with Equal Access and are allocated pursuant to Section 36.421(b). See also Section 36.321(a).

65 Equal Access minutes-of-use used to allocate associated Central Office Expenses pursuant Section 36.421(b).

66 Information Origination/Termination Expenses that are associated with Equal Access and are allocated pursuant to Section 36.421(b). See also Section 36.331.

67 Equal Access minutes-of-use used to allocate associated Information Origination/Termination Expenses pursuant to Section 36.421(b).

68 C&WF Expenses that are associated with Equal Access and are allocated pursuant to Section 36.421(b). See also Section 36.341(a).

69 Equal Access minutes-of-use used to allocate associated C&WF Expenses pursuant to Section 36.421(b).

70 Other Property Plant and Equipment Expenses that are associated with Equal Access and are allocated pursuant to Section 36.421(b). See also Section 36.352(a).

71 Equal Access minutes-of-use used to allocate associated Other Property Plant and Equipment Expenses pursuant to Section 36.421(b).

72 Network Operations Expenses that are associated with Equal Access and are allocated pursuant to Section 36.421(b). See also Section 36.353.

73 Equal Access minutes-of-use used to allocate associated Network Operations Expenses pursuant to Section 36.421(b).

74 Access Expenses that are associated with Equal Access and are allocated pursuant to Section 36.421(b). See also Section 36.354(a).

75 Equal Access minutes-of-use used to allocate associated Access Expenses pursuant to Section 36.421(b).

76 Depreciation and amortization expenses that are associated with Equal Access and are allocated pursuant to Section 36.421(b). See also Section 36.361(a).

77 Equal Access minutes-of-use used to allocate associated depreciation and amortization expenses pursuant to Section 36.421(b).

78 Marketing Expenses that are associated with Equal Access and are allocated pursuant to Section 36.421(b). See also Section 36.372(a).

79 Equal Access minutes-of-use used to allocate associated Marketing Expenses pursuant to Section 36.421(b).

80 Services Expenses that are associated with Equal Access and are allocated pursuant to Section 36.421(b). See also Section 36.373(a).

81 Equal Access minutes-of-use used to allocate associated Services Expenses pursuant to Section 36.421(b).

82 Corporate Operations Expenses that are associated with Equal Access and are allocated pursuant to Section 36.421(b).

83 Equal Access minutes-of-use used to allocate associated Corporate Operations Expenses pursuant to Section 36.421(b).

84 Total expenses associated with Equal Access, total of rows 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, and 82, including amounts that are directly assigned pursuant to Section 69.410(a).

D. Deferred Charges and Expense Amortization

90 Deferred charges (Account 1439) beginning balance for the period, which are Equal Access capitalized expenses pursuant to Equal Access Reconsideration Order, 1 FCC Rcd at 437.

91 Current period Equal Access expenses that are capitalized to Deferred Charges (Account 1439) in the current period. See Equal Access Reconsideration Order, 1 FCC Rcd at 437.

92 Current period Equal Access expenses that were capitalized but are treated as an expense during the current period (Account 6728). See Equal Access Reconsideration Order, 1 FCC Rcd at 437.

93 Average deferred charges balance for the current period for Equal Access Expenses that are capitalized.

II. Telecommunications Property

A. General Support Facilities (GSF)

1000 General Support Facilities that are allocated pursuant to Sections 36.111-.112 and 69.307.

1001 Big Three Expense Factor used by Class A carriers to allocate General Support Facilities pursuant to Section 36.112(a).

1002 Investment factor used by Class B carriers to allocate General Support Facilities pursuant to Section 36.112(b).

1003 Investment factor used to allocate General Support Facilities pursuant to Section 69.307.

B. Central Office Equipment (COE)

1. Category 1 COE, Operator Systems Equipment

a) Switchboards at Toll Centers

1100 Separate toll boards that are allocated pursuant to Section 36.123(b) and are directly assigned pursuant to Section 69.306(b).

1101 Weighted standard work seconds that are used to allocate separate toll boards pursuant to Section 36.123(b).

1102 Separate local manual boards that are allocated pursuant to Section 36.123(b) and are directly assigned pursuant to Section 69.306(b).

1103 Weighted standard work seconds that are used to allocate separate local manual boards pursuant to Section 36.123(b).

1104 Combined local and toll boards that are allocated pursuant to Section 36.123(b) and are directly assigned pursuant to Section 69.306(b).

1105 Weighted standard work seconds that are used to allocate combined local and toll boards pursuant to Section 36.123(b).

1106 Combined toll and DSA boards that are allocated pursuant to Section 36.123(b) and are directly assigned pursuant to Section 69.306(b).

1107 Weighted standard work seconds that are used to allocate combined toll and DSA boards pursuant to Section 36.123(b).

1108 Separate DSA boards that are allocated pursuant to Section 36.123(b) and are directly assigned pursuant to Section 69.306(b).

1109 Weighted standard work seconds used to allocate separate DSA boards pursuant to Section 36.123(b).

1110 Separate DSB boards that are allocated pursuant to Section 36.123(b) and are directly assigned pursuant to Section 69.306(b).

1111 Weighted standard work seconds that are used to allocate separate DSB boards pursuant to Section 36.123(b).

1112 Total switchboards at toll centers, total of rows 1100, 1102, 1104, 1106, 1108, and 1110.

b) Service Observing Boards

1120 Joint service observing boards that are apportioned between exchange and toll pursuant to Section 36.123(d).

1121 Number of exchange service observing units used to apportion the cost of service observing boards between exchange and toll pursuant to Section 36.123(d).

1122 Number of toll service observing units used to apportion the cost of service observing boards between exchange and toll pursuant to Section 36.123(d).

1123 Exchange portion of joint service observing boards that are directly assigned pursuant to Section 36.123(d).

1124 Toll portion of joint service observing boards that are allocated pursuant to Section 36.123(d).

1125 Separate toll service observing boards that are allocated pursuant to Section 36.123(d).

1126 Total separate toll service observing boards and the toll portion of joint service observing boards that are allocated pursuant to Sections 36.123(d) and 69.306(b).

1127 Toll minutes-of-use that are used to allocate the toll portion of joint service observing boards and separate toll service observing boards pursuant to Section 36.123(d).

1128 Remaining combined investment in Categories 1, 2, and 3 COE used to allocate service observing boards pursuant to Section 69.306(b).

1129 Total service observing boards, total of rows 1123 and 1126.

c) Auxiliary Service Boards

1130 Separate directory assistance boards that are apportioned between toll and other pursuant to Section 36.123(c)(1) and are directly assigned pursuant to Section 69.306(b).

1131 Toll weighted standard work seconds used to apportion the cost of separate directory assistance boards between toll and other pursuant to Section 36.123(c)(1)(i).

1132 Other weighted standard work seconds used to apportion the cost of separate directory assistance boards between toll and other pursuant to Section 36.123(c)(1)(i).

1133 The portion of auxiliary service boards associated with toll directory assistance service that is allocated pursuant to Sections 36.123(c)(1)(i).

1134 Toll weighted standard work seconds used to allocate the portion of auxiliary service boards associated with toll directory assistance service pursuant to Sections 36.123(c)(1)(i).

1135 The portion of auxiliary service boards associated with other directory assistance that is allocated pursuant to Section 36.123(c)(1)(i).

1136 Other weighted standard work seconds used to allocate the portion of auxiliary service boards associated with other directory assistance pursuant to Section 36.123(c)(1)(ii).

1137 Separate intercept boards and automated intercept systems that are allocated pursuant to Section 36.123(c)(2) and are directly assigned pursuant to Section 69.306(b).

1138 Subscriber line minutes-of-use that are used to allocate separate intercept boards and automated intercept systems pursuant to Section 36.123(c)(2).

1139 Joint auxiliary weighted standard work seconds associated with directory assistance pursuant to Section 36.123(c)(4).

1140 Joint auxiliary weighted standard work seconds associated with intercept service pursuant to Section 36.123(c)(4).

1141 Joint auxiliary weighted standard work seconds associated with rate and route boards pursuant to Section 36.123(c)(4).

1142 Toll weighted standard work seconds used to apportion the portion of joint auxiliary service boards associated with directory assistance pursuant to Sections 36.123(c)(1)(i) and (c)(4).

1143 Other weighted standard work seconds used to apportion the portion of joint auxiliary service boards associated with directory assistance pursuant to Sections 36.123(c)(1)(i) and (c)(4).

1144 Joint auxiliary service boards that are associated with directory assistance and are apportioned between toll and other pursuant to Sections 36.123(c)(1)(i) and 36.123(c)(4) and are directly assigned pursuant to Section 69.306(b).

1145 Toll portion of joint auxiliary service boards that are associated with directory assistance and are allocated pursuant to Sections 36.123(c)(1)(ii) and (c)(4).

1146 Toll weighted standard work seconds used to allocate the toll portion of joint auxiliary service boards associated with toll directory assistance pursuant to Sections 36.123(c)(1)(ii) and (c)(4).

1147 The other portion of joint auxiliary service boards that are associated with other directory assistance and are allocated pursuant to Sections 36.123(c)(1)(ii) and (c)(4).

1148 Other weighted standard work seconds used to allocate the portion of joint auxiliary service boards associated with other directory assistance pursuant to Sections 36.123(c)(1)(ii) and (c)(4).

1149 The portion of joint auxiliary service boards associated with intercept service and allocated pursuant to Sections 36.123(c)(2) and (c)(4) and are directly assigned pursuant to Section 69.306(b).

1150 Subscriber line minutes-of-use used to allocate the portion of joint auxiliary service boards associated with intercept service pursuant to Sections 36.123(c)(2) and (c)(4).

1151 The portion of joint auxiliary service boards associated with rate and route service that is allocated pursuant to Section 36.123(c)(4) and is directly assigned pursuant to Section 69.306(b).

1152 Rate and route weighted standard work seconds used to allocate the portion of joint auxiliary service boards associated with rate and route service pursuant to Section 36.123(c)(4).

1153 Total joint auxiliary service boards, total of rows 1145, 1147, 1149, and 1151.

1154 Total auxiliary service boards, total of rows 1130, 1137, and 1153.

d) Traffic Service Positions

1160 Operator Traffic Service Position Systems that are allocated pursuant to Section 36.123(e)(1).

1161 Weighted standard work seconds used to allocate Operator Traffic Service Position Systems pursuant to Section 36.123(e)(1).

1162 Remote trunking arrangements that are allocated pursuant to Section 36.123(e)(2).

1163 Processor real time (in seconds) used to allocate remote trunking arrangements pursuant to Section 36.123(e)(2).

1164 Remaining investment at the central control location that is allocated pursuant to Section 36.123(e)(3).

1165 Processor real time (in seconds) used to allocate the remaining investment pursuant to Section 36.123(e)(3).

1166 Other Traffic Service Positions associated with common basic control units that are allocated pursuant to Section 36.123(b)(1)(iv).

1167 Weighted standard work seconds used to allocate other Traffic Service Position Systems pursuant to Section 36.123(b)(1)(iv).

1168 Total Traffic Service Positions, total of rows 1161, 1163, 1165, and 1167, including amounts that are directly assigned pursuant to Section 69.306(b).

1170 Total Category 1 COE, total of rows 1112, 1129, 1154, and 1168.

2. Category 2 COE, Tandem Switching Equipment

1200 Tandem Switching Equipment that is associated with private lines and is directly assigned pursuant to Section 36.124(b).

1201 Tandem Switching Equipment that is associated with message use and is directly assigned pursuant to Section 36.124(b).

1202 Tandem Switching Equipment that is jointly used and is allocated pursuant to Section 36.124(b).

1203 Tandem minutes-of-use used to allocate jointly used Tandem Switching Equipment pursuant to Section 36.124(b).

1204 Total Category 2 COE, total of rows 1200, 1201, and 1202 including Category 2 COE that is directly assigned pursuant to Section 69.306(c).

3. Category 3 COE, Local Switching Equipment

1210 Local Switching Equipment that is associated with private lines and is directly assigned pursuant to Section 36.1(c).

1211 Local Switching Equipment that is associated with message use and is directly assigned pursuant to Section 36.1(c).

1212 Local Switching Equipment amount that is allocated pursuant to Section 36.125.

1213 Interstate allocation factor (in percent) used to allocate Category 3 COE pursuant to Section 36.125(c).

1214 Composite allocation factor (in percent) used to compute the interstate allocation factor used to allocate Category 3 COE pursuant to Section 36.125(c).

1215 "A Component" (in percent) used to calculate the interstate allocation factor used to allocate Category 3 COE pursuant to Section 36.125(d).

1216 Dial Equipment Minutes (minutes of holding time of originating and terminating local switching equipment, as defined in the Glossary of Part 36) used to calculate the interstate allocation factor pursuant to Sections 36.125(b) and (c).

1217 "B Component" (in percent) used to calculate the interstate allocation factor used to allocate Category 3 COE pursuant to Sections 36.125(c) and (d).

1219 Total Category 3 COE, total of rows 1210, 1211, and 1212 including Category 3 COE that is directly assigned pursuant to Section 69.306(d).

4. Category 4 COE, Circuit Equipment

a) Category 4.1, Exchange Circuit Equipment

(1) Category 4.11, Wideband Exchange Line Circuit Equipment

1220 Category 4.11 COE that is associated with private line circuits and is directly assigned pursuant to Sections 36.126(c)(1) and 36.155.

1221 Category 4.11 COE that is associated with message circuits and is directly assigned pursuant to Sections 36.126(c)(1) and 36.155.

1222 Category 4.11 COE that is jointly used and is allocated pursuant to Sections 36.126(c)(1) and 36.155.

1223 Minutes-of-use used to allocate jointly used Category 4.11 COE pursuant to Sections 36.126(c)(1) and 36.155.

1224 Total Category 4.11 COE, total of rows 1220, 1221, and 1222 including Category 4.11 COE that is directly assigned pursuant to Section 69.305 and Amendment of Part 69 of the Commission's Rules and Regulations, Access Charges, to Conform It with Part 36, Jurisdictional Separations Procedures, CC Docket No. 87-113, FCC 88-400 released December 12, 1988, 4 FCC Rcd 765, 772 (1988) (Part 69 Reconsideration Order), at para. 48.

(2) Category 4.12 COE, Exchange Trunk Circuit Equipment (Wideband and Non-Wideband)

NOTE: Category 4.12 COE is divided into basic and special if amounts of exchange and interexchange special circuit equipment are significant pursuant to Section 36.126(b)(4). If the reporting carrier does not segregate Category 4.12 COE into basic and special, it must report all such COE as basic.

(a) Basic Non-Wideband Category 4.12 COE

1230 Basic non-wideband Category 4.12 COE that is associated with private line circuits and is directly assigned pursuant to Section 36.126(c)(2) and 36.155.

1231 Basic non-wideband Category 4.12 COE that is associated with message circuits and is directly assigned pursuant to Sections 36.126(c)(2) and 36.155.

1232 Basic non-wideband Category 4.12 COE that is jointly used and is allocated pursuant to Sections 36.126(c)(2) and 36.155.

1233 Minutes-of-use used to allocate jointly used Category 4.12 COE pursuant to Sections 36.126(c)(2) and 36.155.

1234 Total basic non-wideband Category 4.12 COE, total of rows 1230, 1231, and 1232.

(b) Special Non-Wideband Category 4.12 COE

1240 Special non-wideband Category 4.12 COE that is associated with private line circuits and is directly assigned pursuant to Sections 36.126(c)(2) and 36.155. See also Glossary, Part 36.

1241 Special non-wideband Category 4.12 COE that is associated with TWX circuits and is allocated pursuant to Sections 36.126(c)(2) and 36.155.

1242 TWX minutes-of-use used to allocate special non-wideband Category 4.12 COE that is associated with TWX circuits pursuant to Sections 36.126(c)(2) and 36.155.

1243 Total special non-wideband Category 4.12 COE, total of rows 1240 and 1241.

(c) Wideband Category 4.12 COE

1250 Wideband Category 4.12 COE that is associated with private line circuits and is directly assigned pursuant to Sections 36.126(c)(2) and 36.155.

1251 Wideband Category 4.12 COE that is associated with message circuits and is directly assigned pursuant to Sections 36.126(c)(2) and 36.155.

1252 Wideband Category 4.12 COE that is jointly used and is allocated pursuant to Sections 36.126(c)(2) and 36.155.

1253 Minutes-of-use used to allocate wideband Category 4.12 COE pursuant to Sections 36.126(c)(2) and 36.155.

1254 Total wideband Category 4.12 COE, total of rows 1250, 1251, and 1252.

1260 Total Category 4.12 COE, total of rows 1234, 1243, and 1254 including Wideband Category 4.12 COE that is directly assigned pursuant to the Part 69 Reconsideration Order, at para. 48.

(3) Category 4.13 COE, Exchange Line Circuit Equipment Excluding Wideband

NOTE: Category 4.13 COE is divided into basic and special if amounts of exchange and interexchange special circuit equipment are significant pursuant to Section 36.126(b)(4). If the reporting carrier does not segregate Category 4.13 COE into basic and special, it must report all such COE as basic.

(a) Basic Category 4.13 COE

1270 Total number of working loops used to allocate basic Category 4.13 COE pursuant to Sections 36.126(c)(3), 36.154(a) and 69.501(d) and (e).

1271 Number of working loops that are associated with private lines and WATS lines pursuant to Sections 36.126(c)(3) and 36.154(a).

1272 Number of working loops that are associated with subscriber or common lines that are jointly used for state and interstate interexchange services pursuant to Sections 36.126(c)(3) and 36.154(a).

1273 Average cost per working loop that is used to allocate basic Category 4.13 COE pursuant to Sections 36.126(c)(3) and 36.154(a).

1274 Basic Category 4.13 COE that is associated with private line circuits and WATS circuits and is directly assigned pursuant to Sections 36.126(c)(3) and 36.154(a) and (b).

1275 Basic Category 4.13 COE that is associated with subscriber or common lines that are jointly used for local exchange service and exchange access for state and interstate interexchange services and which investment is allocated pursuant to Sections 36.126(c)(3) and 36.154(c)-(f).

1276 Loop allocation factor (in percent) used to allocate basic Category 4.13 COE subscriber or common lines pursuant to Sections 36.126(c)(3) and 36.154(c)-(f). For the calculation of the loop allocation factor, see Section 36.154(c)-(f) and infra rows 1456-1459.

1277 Total basic Category 4.13 COE, total of rows 1274 and 1275.

(b) Special Category 4.13 COE

1280 Special Category 4.13 COE that is associated with private line circuits and is directly assigned pursuant to Sections 36.126(c)(3) and 36.154(a) and (b). See also Glossary, Part 36.

1281 Special Category 4.13 COE that is associated with TWX circuits and is allocated pursuant to Sections 36.126(c)(3) and 36.155.

1282 TWX minutes-of-use used to allocate special Category 4.23 COE that is associated with TWX circuits pursuant to Sections 36.126(c)(3) and 36.155.

1283 Total special Category 4.13 COE, total of rows 1280 and 1281.

1290 Total Category 4.13 COE, total of rows 1277, and 1283, including Category 4.13 COE that is directly assigned pursuant to Section 69.304 and the Part 69 Reconsideration Order, at para. 48.

1300 Total Category 4.1 COE, total of rows 1224, 1260, and 1290.

b) Category 4.2 COE, Interexchange Circuit Equipment

(1) Category 4.21 COE, Interexchange Circuit Equipment Furnished to Another Company for Interstate Use

1310 Category 4.21 COE that is directly assigned pursuant to Sections 36.126(e)(1) and 69.305 and the Part 69 Reconsideration Order, at para. 48.

(2) Category 4.22 COE, Interexchange Circuit Equipment Used for Wideband Service

1320 Category 4.22 COE that is associated with private line circuits and is directly assigned pursuant to Sections 36.126(e)(2) and 36.156(b).

1321 Category 4.22 COE that is associated with message circuits and is directly assigned pursuant to Sections 36.126(e)(2) and 36.156(b).

1322 Category 4.22 COE that is jointly used and is allocated pursuant to Sections 36.126(e)(2) and 36.156(b).

1323 Conversation-minute-miles used to allocate jointly used Category 4.22 COE pursuant to Sections 36.126(e)(2) and 36.156(b).

1324 Total Category 4.22 COE, total of rows 1320, 1321, and 1322 including Category 4.22 COE that is directly assigned pursuant to Section 69.305 and the Part 69 Reconsideration Order, at para. 48.

(3) Category 4.23 COE, All Other Interexchange Circuit Equipment

NOTE: Category 4.23 COE is divided into special and basic if amounts of exchange and interexchange special circuit equipment are significant pursuant to Section 36.126(b)(4). If the reporting carrier does not segregate Category 4.23 COE into basic and special, it must report all such COE as basic.

(a) Basic Category 4.23 COE

1330 Total terminations used to determine the amount of basic Category 4.23 COE pursuant to Section 36.126(e)(3)(i).

1331 Terminations used to determine the amount of private line basic Category 4.23 COE investment pursuant to Section 36.126(e)(3)(i).

1332 Terminations used to determine the amount of directly assigned message basic Category 4.23 COE pursuant to Section 36.126(e)(3)(i).

1333 Terminations used to determine the amount of jointly used message basic Category 4.23 COE pursuant to Section 36.126(e)(3)(i).

1334 Terminations used to determine the amount of TWX basic Category 4.23 COE pursuant to Section 36.126(e)(3)(i).

1335 Average cost per termination that is used to determine the cost of basic Category 4.23 COE pursuant to Section 36.126(e)(3)(i).

1336 Basic Category 4.23 that is associated with private line circuits and is directly assigned pursuant to Section 36.126(e)(3)(i).

1337 Basic Category 4.23 COE that is associated with message circuits and is directly assigned pursuant to Sections 36.1(c) and 36.126(e)(3)(i).

1338 Basic Category 4.23 COE that is jointly used and is allocated pursuant to Section 36.126(e)(3)(i).

1339 Conversation-minutes used to allocate jointly used Category 4.23 COE pursuant to Section 36.126(e)(3)(i).

1340 Basic Category 4.23 COE that is associated with TWX circuits and is allocated pursuant to Section 36.126(e)(3)(ii).

1341 Connection-minutes used to allocate basic Category 4.23 COE that is associated with TWX circuits pursuant to Section 36.126(e)(3)(ii).

1342 Total basic Category 4.23 COE, total of rows 1336, 1337, 1338, and 1340.

(b) Special Category 4.23 COE

1350 Special Category 4.23 COE that is associated with private line circuits and is directly assigned pursuant to Section 36.126(e)(3).

1351 Special Category 4.23 COE that is associated with TWX circuits and is allocated pursuant to Sections 36.126(e)(3)(ii) and (iii).

1352 Connection-minutes used to allocate special Category 4.23 COE that is associated with TWX circuits pursuant to Sections 36.126(e)(3)(ii) and (iii).

1360 Total special Category 4.23 COE, total of rows 1350 and 1351.

1370 Total Category 4.23 COE, total of rows 1342 and 1360, including Category 4.23 COE that is directly assigned pursuant to Section 69.305 and the Part 69 Reconsideration Order, at para. 48.

1380 Total Category 4.2 COE, total of rows 1310, 1324, and 1370.

c) Category 4.3 COE, Host/Remote Message Circuit Equipment

1390 WATS Category 4.3 COE that is directly assigned pursuant to Sections 36.126(f)(1) and 36.157(a)(2).

1391 Message Category 4.3 COE that is directly assigned pursuant to Sections 36.1(c) and 36.126(f)(1).

1392 Message Category 4.3 COE that is jointly used and is allocated pursuant to Sections 36.126(f)(1)(i) and 36.157(a)(1).

1393 Minutes-of-use-miles used to allocate message Category 4.3 COE pursuant to Sections 36.126(f)(1)(i) and 36.157(a)(1).

1394 Total Category 4.3 COE, total of rows 1390, 1391, and 1392 including Category 4.3 COE that is directly assigned pursuant to Section 69.305 the Part 69 Reconsideration Order.

1400 Total Category 4 COE, total of rows 1300, 1380, and 1394.

1410 Total COE, total of rows 1170, 1204, 1219 and 1400.

C. Information Origination/Termination Equipment (IOT)

1. Category 1 Other Information Origination/Termination Equipment

NOTE: Rows 1420 through 1423 provide Part 36 detail and rows 1424 through 1428 provide Part 69 detail.

Part 36 Detail

1420 Other Information Origination/Termination Equipment, less coinless pay telephone equipment, that is allocated pursuant to Section 36.142(a).

1421 Loop allocation factor (in percent) that is used to allocate Other Information Origination/Termination Equipment pursuant to Section 36.142(a).

1422 Other Information Origination/Termination Equipment that is associated with coinless pay telephone equipment and is allocated pursuant to Section 36.142(a).

1423 Exchange carrier minutes-of-use used to allocate coinless pay telephone equipment pursuant to Section 36.142(a).

Part 69 Detail

1424 Investment in public telephone equipment that is directly assigned pursuant to Section 69.303(a).

1425 Other Information Origination/Termination Equipment that is allocated pursuant to Section 69.303(b).

1426 Number of equivalent lines used to allocate all Other Information Origination/Termination Equipment pursuant to Section 69.303(b).

1427 Loop allocation factor (in percent) used to determine the number of equivalent local exchange subscriber lines pursuant to Section 69.303(b). For a definition of the loop allocation factor, see Section 36.154(c)-(f) and infra rows 1456-1459.

1428 Total Category 1, Other Information Origination/Termination Equipment, total of rows 1420, 1422, 1424, and 1425. Exception: for Column d, include in total only rows 1420 and 1422.

2. Category 2 Information Origination/Termination Equipment-New Customer Premises Equipment

1430 Category 2 Information Origination/Termination Equipment that is directly assigned pursuant to Section 36.142(b).

1440 Total Information Origination/Termination Equipment, total of rows 1428 and 1430.

D. Cable and Wire Facilities (C&WF)

1. Category 1 C&WF-Exchange Line C&WF

1450 Total number of working loops used to determine the amount of Category 1 C&WF pursuant to Sections 36.154(a) and 69.501(d) and (e).

1451 Number of working loops that are associated with private lines and WATS lines pursuant to Section 36.154(a).

1452 Number of working loops that are associated with subscriber or common lines that are jointly used for local exchange service and exchange access for state and interstate interexchange services pursuant to Section 36.154(a).

1453 Average cost per working loop used to determine Category 1 C&WF pursuant to Section 36.154(a).

1454 Categories 1.1 and 1.2 C&WF that are associated with private lines and WATS lines and are directly assigned pursuant to Sections 36.154(a) and (b).

1455 Category 1.3 C&WF that is associated with subscriber or common lines that are jointly used for local exchange service and exchange access for state and interstate interexchange services and are allocated pursuant to Sections 36.154(c)-(f).

1456 Frozen 1981 SPF (in percent) used to calculate the allocation factor for Category 1 C&WF pursuant to Section 36.154(e).

1457 Previous year adjusted transitional SPF (in percent) (including any adjustments) used to calculate the allocation factor for Category 1 C&WF pursuant to Section 36.154(f).

1458 Current year adjusted transitional SPF (in percent) (including any adjustments) used to calculate the allocation factor for Category 1 C&WF pursuant to Section 36.154(f).

1459 Loop allocation factor (in percent) used to allocate Category 1 C&WF pursuant to Section 36.154(d).

1460 Total Category 1 C&WF, total of rows 1454 and 1455 including Category 1 C&WF that is directly assigned pursuant to Section 69.304.

2. Category 2 C&WF-Wideband and Exchange Trunk (C&WF)

a) Exchange Trunk Category 2 C&WF (Non-Wideband)

1470 Non-Wideband exchange trunk Category 2 C&WF that is associated with private lines and WATS lines and is directly assigned pursuant to Section 36.155.

1471 Non-Wideband exchange trunk that is associated with message use and is directly assigned pursuant to Section 36.155.

1472 Non-Wideband exchange trunk Category 2 C&WF that is jointly used and is allocated pursuant to Section 36.155.

1473 Minutes-of-use factor that is used to allocate nonwideband exchange trunk Category 2 C&WF pursuant to Section 36.155.

1474 Total non-wideband exchange trunk Category 2 C&WF, total of rows 1470, 1471, and 1472.

b) Wideband Category 2 C&WF

1480 Wideband Category 2 C&WF that is associated with private lines and WATS lines and is directly assigned pursuant to Section 36.155.

1481 Wideband Category 2 C&WF that is associated with message use and is directly assigned pursuant to Section 36.155.

1482 Wideband Category 2 C&WF that is jointly used and is allocated pursuant to Section 36.155.

1483 Minutes-of-use used to allocate wideband Category 2 C&WF pursuant to Section 36.155.

1484 Total wideband Category 2 C&WF total of rows 1480, 1481, and 1482.

1485 Total Category 2 C&WF, total of rows 1474 and 1483 including Category 2 C&WF that is directly assigned pursuant to Section 69.305.

3. Category 3 C&WF, Interexchange C&WF

1490 Total circuit miles that are used to determine the amount of Category 3 C&WF pursuant to Section 36.156(a).

1491 Circuit miles used to determine the amount of private line Category 3 C&WF pursuant to Section 36.156(a).

1492 Circuit miles used to determine the amount of directly assigned message Category 3 C&WF pursuant to Section 36.156(a).

1493 Circuit miles used to determine the amount of joint message Category 3 C&WF pursuant to Section 36.156(a).

1494 Circuit miles used to determine the amount of TWX Category 3 C&WF pursuant to Section 36.156(a).

1495 Average cost per circuit mile that is used to determine the cost of Category 3 C&WF pursuant to Section 36.156(a).

1496 Category 3 C&WF that is associated with private lines and is directly assigned pursuant to Section 36.156(b).

1497 Category 3 C&WF that is associated with message use and is directly assigned pursuant to Section 36.156(b).

1498 Category 3 C&WF that is associated with joint message use and is allocated pursuant to Section 36.156(b).

1499 Conversation-minute-miles used to allocate joint message use Category 3 C&WF pursuant to Section 36.156(b).

1500 Category 3 C&WF that is associated with TWX usage and is allocated pursuant to Section 36.156(a).

1501 Conversation-minute-miles that are used to allocate TWX Category 3 C&WF pursuant to Section 36.156(b).

1510 Total Category 3 C&WF, total of rows 1496, 1497, 1498, and 1500 including Category 3 C&WF that is directly assigned pursuant to Section 69.305.

4. Category 4 C&WF-Host/Remote Message C&WF

1520 Category 4 C&WF used for WATS closed end access that is directly assigned pursuant to Section 36.157(a)(2).

1521 Message Category 4 C&WF that is directly assigned pursuant to Sections 36.1(c) and 36.157(a).

1522 Message Category 4 C&WF that is jointly used and is allocated pursuant to Section 36.157(a)(1).

1523 Minutes-of-use used to allocate message Category 4 C&WF pursuant to Section 36.157(a)(1).

1524 Total Category 4 C&WF, total of rows 1520, 1521, and 1522 including Category 4 C&WF that is directly assigned pursuant to Section 69.305.

1530 Total C&WF, total of rows 1460, 1485, 1510, and 1524.

1540 Total Telecommunications Plant, total of rows 51, 1000, 1410, 1440, and 1530.

III. Other Telecommunications Property

A. Tangible Assets

NOTE: Pursuant to Section 69.310(a), carriers may allocate capital leases in one of the following two ways: (1) capital leases that are associated with a plant account may be directly assigned if the plant account is directly assigned; and (2) capital leases may be allocated on the basis of Telecommunications Plant in Service.

1. Capital Leases

2000 Capital leases that are directly assigned based on analysis pursuant to Section 36.161(b).

2001 Capital leases that are associated with General Support Facilities and are allocated pursuant to Section 36.161(b).

2002 General Support Facilities investment used to allocate associated capital leases pursuant to Section 36.161(b).

2003 Capital leases that are associated with Central Office Switching Equipment and are allocated pursuant to Section 36.161(b) and are directly assigned pursuant to Section 69.310(a).

2004 Central Office Switching Equipment investment used to allocate associated capital leases pursuant to Section 36.161(b).

2005 Capital leases that are associated with Operator Systems COE and are allocated pursuant to Section 36.161(b) and are directly assigned pursuant to Section 69.310(a).

2006 Operator Systems COE investment used to allocate associated capital leases pursuant to Section 36.161(b).

2007 Capital leases that are associated with Central Office Transmission Equipment and are allocated pursuant to Section 36.161(b) and are directly assigned pursuant to Section 69.310(a).

2008 Central Office Transmission Equipment investment used to allocate associated capital leases pursuant to Section 36.161(b).

2009 Capital leases that are associated with Information Origination/Termination Equipment and are allocated pursuant to Section 36.161(b) and are directly assigned pursuant to Section 69.310(a).

2010 Information Origination/Termination Equipment investment used to allocate associated capital leases pursuant to Section 36.161(b).

2011 Capital leases that are associated with Cable and Wire Facilities and are allocated pursuant to Section 36.161(b) and are directly assigned pursuant to Section 69.310(a).

2012 Cable and Wire Facilities investment used to allocate associated capital leases pursuant to Section 36.161(b).

2013 Capital leases that are allocated pursuant to Section 69.310(a).

2014 Telecommunications Plant in Service used to allocate capital leases pursuant to Section 69.310(a).

2020 Total Capital leases, total of rows 2000, 2001, 2003, 2005, 2007, 2009, 2011, and 2013. Exception: for Column d, include in total only rows 2000, 2001, 2003, 2005, 2007, 2009, and 2011.

2. Leasehold Improvements

2070 Leasehold improvements that are associated with General Support Facilities and are allocated pursuant to Section 36.161(c).

2071 General Support Facilities investment used to allocate associated leasehold improvements pursuant to Section 36.161(c).

2080 Leasehold improvements that are associated with Central Office Switching Equipment and are allocated pursuant to Section 36.161(c).

2081 Central Office Switching Equipment investment used to allocate associated leasehold improvements pursuant to Section 36.161(c).

2090 Leasehold improvements that are associated with Operator Systems Central Office Equipment and are allocated pursuant to Section 36.161(c).

2091 Operator Systems Central Office Equipment used to allocate associated leasehold improvements pursuant to Section 36.161(c).

2100 Leasehold improvements that are associated with Central Office Transmission Equipment and are allocated pursuant to Section 36.161(c).

2101 Central Office Transmission Equipment investment used to allocate associated leasehold improvements pursuant to Section 36.161(c).

2110 Leasehold improvements that are associated with Information Origination/Termination Equipment and are allocated pursuant to Section 36.161(c).

2111 Information Origination/Termination Equipment investment used to allocate associated leasehold improvements pursuant to Section 36.161(c).

2120 Leasehold improvements that are associated with Cable and Wire Facilities and are allocated pursuant to Section 36.161(c).

2121 Cable and Wire Facilities investment used to allocate associated leasehold improvements pursuant to Section 36.161(c).

2130 Total leasehold improvements that are allocated pursuant to Section 69.309.

2131 Combined investment used to allocate total leasehold improvements pursuant to Section 69.309.

2140 Total leasehold improvements, total of rows 2070, 2080, 2090, 2100, 2110, 2120, and 2130. Exception: for Column d, include in total only rows 2070, 2080, 2090, 2100, 2110, and 2120.

2150 Total Tangible Assets, total of rows 2020 and 2140.

B. Intangible Assets

2160 Intangible Assets that are allocated pursuant to Sections 36.162(b) and 69.309.

2161 Telecommunications Plant in Service, less Intangible Assets, used to allocate Intangible Assets pursuant to Section 36.162(b).

2162 Combined investment used to allocate Intangible Assets pursuant to Section 69.309.

C. Other Telecommunications Plant

2190 Property Held for Future Telecommunications Use that is allocated pursuant to Section 36.171(a).

2191 Telecommunications Plant under Construction (Short Term) that is allocated pursuant to Section 36.171(a).

2192 Telecommunications Plant under Construction (Long Term) that is allocated pursuant to Section 36.171(a).

2193 Telecommunications Plant Adjustment that is allocated pursuant to Section 36.171(a).

2194 Telecommunications Plant in Service used to allocate rows 2190 through 2193 pursuant to Section 36.171(a).

2195 Property Held for Future Telecommunications Use and Telecommunications Plant Under Construction (Short Term) associated with COE and allocated pursuant to Section 69.302(b)(1).

2196 COE investment used to allocate associated Property Held for Future Telecommunications Use and Telecommunications Plant Under Construction (Short Term) pursuant to Section 69.302(b)(1).

2197 Property Held for Future Telecommunications Use and Telecommunications Plant Under Construction (Short Term) associated with Cable and Wire Facilities Investment and allocated pursuant to Section 69.302(b)(2).

2198 C&WF investment used to allocate Property Held for Future Telecommunications Use and Telecommunications Plant Under Construction (Short Term) pursuant to Section 69.302(b)(2).

2199 Property Held for Future Telecommunications Use and Telecommunications Plant Under Construction (Short Term) associated with General Support Facilities and allocated pursuant to Section 69.302(b)(3).

2200 General Support Facilities Investment used to allocate associated Property Held for Future Telecommunications Use and Telecommunications Plant Under Construction (Short Term) pursuant to Section 69.302(b)(3).

2201 Other Property Held for Future Telecommunications Use, Telecommunications Plant Under Construction (Short Term) that is allocated pursuant to Section 69.302(b)(4).

2202 Telecommunications Plant in Service used to allocate Other Property Held for Future Telecommunications Use, Telecommunications Plant Under Construction (Short Term) pursuant to Section 69.302(b)(4).

2203 Total Other Telecommunications Plant, total rows 2190, 2191, 2192, 2193, 2195, 2197, 2199, and 2201. Exception: for Column d, include in total only rows 2190, 2191, 2192, and 2193.

D. Rural Telephone Bank Stock

2210 Class B Rural Telephone Bank Stock that is allocated pursuant to Sections 36.172(c) and 69.309.

2211 Telecommunications Plant in Service used to allocate Class B Rural Telephone Bank Stock pursuant to Section 36.172(c).

2212 Combined investment used to allocate Class B Rural Telephone Bank Stock pursuant to Section 69.309.

E. Material and Supplies and Cash Working Capital

1. Material and Supplies

2220 Material and Supplies that are associated with customer premises equipment and are directly assigned pursuant to Section 36.181(a).

2221 Other Material and Supplies that are allocated pursuant to Sections 36.181(a) and 69.309.

2222 C&WF investment used to allocate other Material and Supplies pursuant to Section 36.181(a).

2223 Combined investment used to allocate Material and Supplies pursuant to Section 69.309.

2224 Total Material and Supplies, total of rows 2220 and 2221.

2. Cash Working Capital

2230 Cash working capital that is directly assigned pursuant to Section 36.182(a) and is allocated pursuant to Section 69.309. See also Section 65.820(d).

2231 Combined investment used to allocate cash working capital pursuant to Section 69.309.

2240 Total Other Telecommunications Property, total of rows 2150, 2160, 2203, 2210, 2224, and 2230.

F. FCC Investment Adjustment

2250 FCC Investment Adjustment is the net of the following: (1) investment not included above that the FCC has expressly allowed for ratemaking purposes; and (2) investment included above that the FCC has expressly disallowed for ratemaking purposes. See Sections 65.820 and 65.830.

2260 Total Telecommunications Property, total of rows 1540 and 2240, minus row 2250.

IV. Reserves and Deferrals

A. Other Jurisdictional Assets

3000 Other Jurisdictional Assets that are directly assigned pursuant to Section 36.502(a).

B. Accumulated Depreciation

3010 Accumulated depreciation that is associated with General Support Facilities and is allocated pursuant to Sections 36.503(a), 69.2(z), and 69.301(a).

3011 General Support Facilities investment that is used to allocate associated accumulated depreciation pursuant to Sections 36.503(a), 69.2(z), and 69.301(a).

3020 Accumulated depreciation that is associated with Switching Equipment and is allocated pursuant to Sections 36.503(a) and 69.2(z), and 69.301(a).

3021 Switching Equipment investment that is used to allocate associated accumulated depreciation pursuant to Sections 36.503(a), 69.2(z), and 69.301(a).

3030 Accumulated depreciation that is associated with Operator Systems Equipment is allocated pursuant to Sections 36.503(a), 69.2(z), and 69.301(a).

3031 Operator Systems Equipment investment that is used to allocate associated accumulated depreciation pursuant to Sections 36.503(a), 69.2(z), and 69.301(a).

3040 Accumulated depreciation that is associated with Transmission Equipment and is allocated pursuant to Sections 36.503(a), 69.2(z), and 69.301(a).

3041 Transmission Equipment investment used to allocate associated accumulated depreciation pursuant to Sections 36.503(a), 69.2(z), and 69.301(a).

3050 Accumulated depreciation that is associated with Information Origination/Termination Equipment and is allocated pursuant to Sections 36.503(a), 69.2(z), and 69.301(a).

3051 Information Origination/Termination Equipment investment that is used to allocate associated accumulated depreciation pursuant to Sections 36.503(a), 69.2(z), and 69.301(a).

3060 Accumulated depreciation that is associated with Cable and Wire Facilities pursuant to Sections 36.503(a), 69.2(z), and 69.301(a).

3061 Cable and Wire Facilities investment that is used to allocate associated accumulated depreciation pursuant to Sections 36.503(a), 69.2(z), and 69.301(a).

3070 Accumulated depreciation that is associated with Property Held for Future Telecommunications Use and is allocated pursuant to Sections 36.504(a), 69.2(z), and 69.301(a).

3071 Investment in Property Held for Future Telecommunications Use that is used to allocate associated accumulated depreciation pursuant to Sections 36.504(a), 69.2(z), and 69.301(a).

3080 Total accumulated depreciation total of rows 3010, 3020, 3030, 3040, 3050, 3060, and 3070.

C. Accumulated Amortization

1. Accumulated Amortization of Tangible Assets

a) Accumulated Amortization of Capital Leases

3090 Accumulated amortization of capital leases associated with General Support Facilities and which accumulated amortization is allocated pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3091 General Support Facilities investment used to allocate accumulated amortization of associated capital leases pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3100 Accumulated amortization of capital leases associated with Switching Equipment and which accumulated amortization is allocated pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3101 Switching Equipment investment used to allocate accumulated amortization of associated capital leases pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3110 Accumulated amortization of capital leases associated with Operator Systems Equipment and which accumulated amortization is allocated pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3111 Operator Systems investment used to allocate accumulated amortization of associated capital leases pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3120 Accumulated amortization of capital leases associated with Transmission Equipment and which accumulated amortization is allocated pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3121 Transmission Equipment investment used to allocate accumulated amortization of associated capital leases pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3130 Accumulated amortization of capital leases associated with Information Origination/Termination equipment and which accumulated amortization is allocated pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3131 Information Origination/Termination equipment investment used to allocate accumulated amortization of associated capital leases pursuant to Sections 36.361(b), 36.505(a), 69.401(f), 69.2(z), and 69.301(a).

3140 Accumulated amortization of capital leases associated with Cable and Wire Facilities and which accumulated amortization is allocated pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3141 Cable and Wire Facilities investment used to allocate accumulated amortization of associated capital leases pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.401(f).

3150 Total accumulated amortization of capital leases, total of rows 3090, 3100, 3110, 3120, 3130, and 3140.

b) Accumulated Amortization of Leasehold Improvements

3160 Accumulated amortization of leasehold improvements associated with General Support Facilities and which accumulated amortization is allocated pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3161 General Support Facilities investment used to allocate accumulated amortization of associated leasehold improvements pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3170 Accumulated amortization of leasehold improvements associated with Switching Equipment and which accumulated amortization is allocated pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3171 Switching Equipment investment used to allocate accumulated amortization expenses of associated leasehold improvements pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3180 Accumulated amortization of leasehold improvements associated with Operator Systems Equipment and which accumulated amortization is allocated pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3181 Operator Systems investment used to allocate accumulated amortization of associated leasehold improvements pursuant to Sections 36.361, 36.505(a), 69.2(z), and 69.301(a).

3190 Accumulated amortization of leasehold improvements associated with Transmission Equipment and which accumulated amortization is allocated pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3191 Transmission Equipment investment used to allocate accumulated amortization of associated leasehold improvements pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3200 Accumulated amortization of leasehold improvements associated with Information Origination/Termination Equipment and which accumulated amortization is allocated pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3201 Information Origination/Termination Equipment investment used to allocate accumulated amortization of associated leasehold improvements pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3210 Accumulated amortization of leasehold improvements associated with Cable and Wire Facilities and which accumulated amortization is allocated pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3211 Cable and Wire Facilities investment used to allocate accumulated amortization of associated leasehold improvements pursuant to Sections 36.361(b), 36.505(a), 69.2(z), and 69.301(a).

3220 Total accumulated amortization of leasehold improvements, total of rows 3160, 3170, 3180, 3190, 3200, and 3210.

3230 Total accumulated amortization of Tangible Assets, total of rows 3150 and 3220.

2. Accumulated Amortization of Intangible Assets and Other Accumulated Amortization

3240 Accumulated amortization of Intangible Assets that is allocated pursuant to Sections 36.361, 69.2(z), and 69.301(a).

3241 Intangible Assets used to allocate associated accumulated amortization pursuant to Sections 36.361, 69.2(z), and 69.301(a).

3250 Other accumulated amortization that is allocated pursuant to Sections 36.361, 69.2(z), and 69.301(a).

3251 Associated investment used to allocate other accumulated amortization pursuant to Sections 36.361, 69.2(z), and 69.301(a).

3260 Total accumulated amortization of Intangible Assets and other accumulated amortization, total of rows 3240 and 3250.

3270 Total accumulated amortization, total of rows 3230 and 3260.

D. Net Current Deferred Operating Income Taxes

3280 Net Current Deferred Operating Income Taxes that are associated with General Support Facilities and are allocated pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3281 General Support Facilities investment used to allocate associated Net Current Deferred Operating Income Taxes pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3290 Net Current Deferred Operating Income Taxes that are associated with Switching Equipment and are allocated pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3291 Switching Equipment investment used to allocate associated Net Current Deferred Operating Income Taxes pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3300 Net Current Deferred Operating Income Taxes that are associated with Operator Systems Equipment and are allocated pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3301 Operator Systems Equipment investment used to allocate associated Net Current Deferred Operating Income Taxes pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3310 Net Current Deferred Operating Income Taxes that are associated with Transmission Equipment and are allocated pursuant to Sections 36.505(a), 69.2(z), and 69.301(a).

3311 Transmission Equipment investment used to allocate associated Net Current Deferred Income Taxes pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3320 Net Current Deferred Operating Income Taxes that are associated with Information Origination/Termination Equipment and are allocated pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3321 Information Origination/Termination Equipment investment used to allocate associated Net Current Deferred Operating Income Taxes pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3330 Net Current Deferred Operating Income Taxes that are associated with Cable and Wire Facilities and are allocated pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3331 Cable and Wire Facilities investment used to allocate associated Net Current Deferred Operating Income Taxes pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3340 Total Net Current Deferred Operating Income Taxes, total of rows 3280, 3290, 3300, 3310, 3320, and 3330.

E. Net Noncurrent Deferred Operating Income Taxes

3350 Net Noncurrent Deferred Operating Income Taxes that are associated with General Support Facilities and are allocated pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3351 General Support Facilities investment used to allocate associated Net Noncurrent Deferred Operating Income Taxes pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3360 Net Noncurrent Deferred Operating Income Taxes that are associated with Switching Equipment and are allocated pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3361 Switching Equipment investment used to allocate associated Net Noncurrent Deferred Operating Income Taxes pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3370 Net Noncurrent Deferred Operating Income Taxes that are associated with Operator Systems Equipment and are allocated pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3371 Operator Systems Equipment investment used to allocate associated Net Noncurrent Deferred Operating Income Taxes pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3380 Net Noncurrent Deferred Operating Income Taxes that are associated with Transmission Equipment and are allocated pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3381 Transmission Equipment investment used to allocate associated Net Noncurrent Deferred Operating Income Taxes pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3390 Net Noncurrent Deferred Operating Income Taxes that are associated with Information Origination/Termination Equipment and are allocated pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3391 Information Origination/Termination Equipment investment used to allocate associated Net Noncurrent Deferred Operating Income Taxes pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3400 Net Noncurrent Deferred Operating Income Taxes that are associated with Cable and Wire Facilities and are allocated pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3401 Cable and Wire Facilities investment used to allocate associated Net Noncurrent Deferred Operating Income Taxes pursuant to Sections 36.506(a), 69.2(z), and 69.301(a).

3410 Total Net Noncurrent Deferred Operating Income Taxes, total of rows 3350, 3360, 3370, 3380, 3390, and 3400.

F. Other Jurisdictional Liabilities and Deferred Credits and Reserve Adjustments

3420 Other jurisdictional liabilities and deferred credits that are directly assigned pursuant to Section 36.507(a).

3421 FCC Reserve Adjustment which is the net of the following: (1) reserve items not included above that the Commission has expressly included for ratemaking purposes; and (2) reserve items included above that the Commission has expressly disallowed for ratemaking purposes. See Section 65.820 and 65.830.

3430 Total Reserves and Deferrals, total of rows 3000, 3080, 3270, 3340, 3410, and 3420, minus row 3421.

V. Operating Revenues and Certain Income Accounts

A. Operating Revenues

1. Basic Local Service Revenues

4000 Local private line revenues from broadcast program transmission audio and video services that are directly assigned pursuant to Section 36.212(c).

4001 Revenues attributable to interstate FX-like and CCSA-like services that are directly assigned pursuant to Section 36.212(b).

4002 Wideband message service and TWX revenues that are allocated pursuant to Section 36.212(c).

4003 Minutes-of-use that are used to allocate wideband message service and TWX revenues pursuant to Section 36.212(c).

4004 All Other Basic Local Services Revenues that are directly assigned pursuant to Section 36.212(d).

4005 Total Basic Local Services Revenues, total of rows 4000, 4001, 4002, and 4004, including amounts that are allocated pursuant to Part 69.

2. Network Access Service Revenues

4010 End User Revenue that is directly assigned pursuant to Section 36.213(b).

4011 Switched Access Revenue that is directly assigned pursuant to Section 36.213(c).

4012 Special Access Revenue that is directly assigned pursuant to Section 36.213(d).

4013 State Access Revenue that is directly assigned pursuant to Section 36.213(e).

4014 Total Network Access Services Revenue, total of rows 4010, 4011, 4012, and 4013, including amounts that are allocated pursuant to Part 69.

3. Long Distance Message Service Revenues

4020 Wideband message service and TWX revenues that are allocated pursuant to Section 36.214(a).

4021 Minutes-of-use that are used to allocate long distance wideband message and TWX revenues pursuant to Section 36.214(a).

4022 Long distance private line service revenues from broadcast program transmission audio and video services that are directly assigned pursuant to Section 36.214(b).

4023 All Other Long Distance Message Revenues that are directly assigned pursuant to Section 36.214(c).

4024 Total Long Distance Message Revenue, total of rows 4020, 4022, and 4023, including amounts that are allocated pursuant to Part 69.

4. Miscellaneous Revenues

4030 Directory revenues that are directly assigned pursuant to Section 36.215(a).

4031 Billing and Collecting revenues that are directly assigned pursuant to Section 36.215(b).

4032 All Other Miscellaneous Revenues that are directly assigned pursuant to Section 36.215(c).

4033 Total Miscellaneous Revenues, total of rows 4030, 4031, and 4032, including amounts that are allocated pursuant to Part 69.

5. Uncollectible Revenues

4040 Uncollectible Revenues that are directly assigned pursuant to Section 36.216(a), including amounts that are allocated pursuant to Part 69.

4050 Total Revenues, total of rows 4005, 4014, 4024, and 4033, including amounts that are allocated pursuant to Part 69, less row 4040.

B. Certain Income Accounts

1. Other Operating Income and Expenses

4060 Other operating income and expenses relating to translation in foreign exchange differentials that are directly assigned pursuant to Section 36.221(a).

4061 All Other Operating Income and Expenses that are directly assigned pursuant to Section 36.221(b).

4062 All Other Operating Income and Expenses that are allocated pursuant to Section 36.221(b).

4063 Telecommunications Plant in Service that is used to allocate All Other Operating Income Expenses pursuant to Section 36.221(b).

4064 Total Other Operating Income and Expenses that are allocated pursuant to Section 69.411(a).

4065 Combined investment used to allocate Other Operating Income and Expenses pursuant to Section 69.411(a).

4066 Total Other Operating Income and Expenses, total of rows 4060, 4061, 4062, and 4064. Exception: for Column d, include in total only rows 4060, 4061, and 4062.

2. Non-Operating Income and Expenses

4070 Allowance for funds used during construction that is allocated pursuant to Section 36.222(c).

4071 Telecommunication Plant Under Construction (long term) that is used to allocate allowance for funds use during construction pursuant to Section 36.222(c).

4072 Social and community welfare contributions and fees that are allocated pursuant to Section 36.222(c).

4073 Corporate Operations Expenses used to allocate social and community contributions and fees pursuant to Section 36.222(c).

4074 Total Non-Operating Income and Expenses that are allocated pursuant to Section 69.411(a).

4075 Combined investment used to allocate total Non-Operating Income and Expenses pursuant to Section 69.411(a).

4076 Total Non-Operating Income and Expenses total of rows 4070, 4072, and 4074. Exception: for Column d, include in total only rows 4070 and 4072.

3. Interest and Related Items

4080 Interest paid relating to capital leases that is allocated pursuant to Sections 36.223(a) and 69.411(a).

4081 Capital leases used to allocate interest paid relating to capital leases pursuant to Section 36.223(a).

4082 Combined investment used to allocate interest paid relating to capital leases pursuant to Section 69.411(a).

4. Extraordinary Items

4090 Extraordinary items that are directly assigned pursuant to Section 36.224(a).

5. Income Effect of Jurisdictional Ratemaking Differences

4100 Income effect of jurisdictional ratemaking differences that is directly assigned pursuant to Section 36.225(a).

4110 Total Certain Income Accounts, total of rows 4066, 4076, 4080, 4090, and 4100.

4120 Total Operating Revenues less income effects of jurisdictional ratemaking differences, total of rows 4050, minus row 4100.

VI. Operating Expenses and Taxes

A. Plant Specific Operating Expenses

1. Network Support and General Support Expenses

5000 Network Support Expenses that are allocated pursuant to Sections 36.112, 36.311(b), 69.309, and 69.401(a)(1).

5001 General Support Facilities used to allocate Network Support Expenses pursuant to Sections 36.112 and 36.311(b).

5002 Combined investment used to allocate Network Support Expenses pursuant to Sections 69.309 and 69.401(a)(1).

5010 General Support Expenses that are allocated pursuant to Sections 36.112, 36.311(b), 69.307, and 69.401(a)(2).

5011 General Support Facilities investment used to allocate General Support Expenses pursuant to Sections 36.112 and 36.311(b).

5012 General Support Facilities investment used to allocate General Support Expenses pursuant to Sections 69.307 and 69.401(a)(2).

5013 Total Network Support Expenses and General Support Expenses, total of rows 5000 and 5010.

2. Central Office Expenses

5020 Central Office Expenses that are associated with private lines and are directly assigned pursuant to Section 36.2(d).

5021 Central Office Expenses that are associated with message use and are directly assigned pursuant to Section 36.2(d).

5022 Central Office Expenses that are allocated pursuant to Sections 36.121 and 36.321(b).

5023 Central Office Equipment investment used to allocate Central Office Expenses pursuant to Sections 36.121 and 36.321(b).

5024 Central Office Expenses that are allocated pursuant to Sections 69.306 and 69.401(b).

5025 Central Office Equipment investment used to allocate Central Office Expenses pursuant to Sections 69.306 and 69.401(b).

5026 Total Central Office Expenses, total of rows 5020, 5021, 5022, and 5024. Exception: for Column d, include in total only rows 5020, 5021, and 5022.

3. Information Origination/Termination Expenses

a) Other Information Origination/Termination Expenses

NOTE: Rows 5030 through 5033 provide Part 36 detail and rows 5040 through 5041 provide Part 69 detail.

Part 36 Detail

5030 Other Information Origination/Termination expenses (less coinless pay telephone expenses, if substantial) that is allocated pursuant to Sections 36.142(a) and 36.331(a) and (b).

5031 Loop allocation factor (in percent) used to allocate Other Information Origination/Termination Expenses (less coinless, if substantial) pursuant to Sections 36.142(a) and 36.331(b).

5032 Other Information Origination/Termination Expenses that are associated with coinless pay telephone equipment and are allocated pursuant to Sections 36.142(a) and 36.331(b).

5033 Exchange carrier minutes-of-use that are used to allocate Information Origination/Termination Expenses that are associated with coinless pay telephone equipment pursuant to Sections 36.142(a) and 36.331(b).

Part 69 Detail

5040 Total Other Information Origination/Termination Expenses that are allocated pursuant to Sections 69.303(a) and 69.401(c).

5041 Information Origination/Termination Equipment investment used to allocate Other Information Origination/Termination Expenses pursuant to Sections 69.303(a) and 69.401(c).

5042 Total Other Information Origination/Termination Expenses, total of rows 5030, 5032, and 5040. Exception: for Column d, include in total only rows 5030 and 5032.

b) Customer Premises Equipment Expenses

5050 Expenses associated with Customer Premises Equipment that are directly assigned pursuant to Section 36.331(c).

5060 Total Information Origination/Termination Expenses, total of rows 5042 and 5050.

4. Cable and Wire Facilities Expenses

5070 Cable and Wire Facilities Expenses that are associated with private lines and are directly assigned pursuant to Sections 36.2(d) and 36.341(b).

5071 Cable and Wire Facilities Expenses that are associated with message use and are directly assigned pursuant to Sections 36.2(d) and 36.341(b).

5072 Cable and Wire Facilities Expenses that are allocated pursuant to Sections 36.154-.157 and 36.341(b).

5073 Cable and Wire Facilities investment used to allocate Cable and Wire Facilities expenses pursuant to Sections 36.154-.157 and 36.341(b).

5074 Cable and Wire Facilities that are allocated pursuant to Sections 69.304, 69.305, and 69.401(c).

5075 Cable and Wire Facilities investment used to allocate Cable and Wire Facilities Expenses pursuant to Sections 69.304, 69.305, and 69.401(c).

5076 Total Cable and Wire Facilities Expenses, total of rows 5070, 5071, 5072, and 5074. Exception: for Column d, include in total only rows 5070, 5071, and 5072.

5080 Total Plant Specific Expenses, total of rows 5000, 5010, 5026, 5060, and 5076.

B. Plant Non-Specific Operating Expenses

1. Other Property Plant and Equipment Expenses

6000 Other Property Plant and Equipment Expenses that are allocated pursuant to Sections 36.352(b) and 69.401(d).

6001 Telecommunications Plant in Service used to allocate Other Property Plant and Equipment Expenses pursuant to Section 36.352(b).

6002 Combined investment in Central Office Equipment, Information Origination/Termination Equipment, and Cable and Wire Facilities used to allocate Other Property Plant and Equipment Expenses pursuant to Section 69.401(d).

2. Network Operations and Access Expenses

6010 Network Operations Expenses that are allocated pursuant to Sections 36.353(a) and (b) and 69.401(d).

6011 Investment in Central Office Equipment, Information Origination/Termination Equipment, and Cable and Wire Facilities used to allocate Network Operations Expenses pursuant to Sections 36.353(b) and 69.401(d).

6012 Access Expenses that are directly assigned pursuant to Sections 36.354(a) and 69.401(e).

3. Depreciation and Amortization Expenses

a) Depreciation and Amortization Expenses of Telecommunications Plant in Service

6020 Depreciation expenses that are associated with General Support Facilities and which expenses are allocated pursuant to Sections 36.112, 36.361(b), 69.307, and 69.401(f).

6021 General Support Facilities investment used to allocate associated depreciation expenses pursuant to Sections 36.112, 36.361(b), 69.307, and 69.401(f).

6030 Depreciation expenses that are associated with Switching equipment and which expenses are allocated pursuant to Sections 36.124, 36.125, 36.361(b), 69.306(c) and (d), and 69.401(f).

6031 Switching investment that is used to allocate associated depreciation expenses pursuant to Sections 36.124, 36.125, 36.361(b), 69.306(c) and (d), and 69.401(f).

6040 Depreciation expenses that are associated with Operator Systems Equipment and which expenses are allocated pursuant to Sections 36.124, 36.361(b), 69.306(b), and 69.401(f).

6041 Operator Systems Equipment investment used to allocate associated depreciation expenses pursuant to Sections 36.124, 36.361(b), 69.306(b), and 69.401(f).

6050 Depreciation expenses that are associated with Transmission Equipment and which expenses are allocated pursuant to Sections 36.126, 36.361(b), 69.306(e), and 69.401(f).

6051 Transmission Equipment investment used to allocate associated depreciation expenses pursuant to Sections 36.126, 36.361(b), 69.306(e), and 69.401(f).

6060 Depreciation expenses that are associated with Information Origination/Termination Equipment and which expenses are allocated pursuant to Sections 36.142, 36.361(b), 69.303, and 69.401(f).

6061 Information Origination/Termination Equipment investment used to allocate associated depreciation expenses pursuant to Sections 36.142, 36.361(b), 69.303, and 69.401(f).

6070 Depreciation expenses that are associated with Cable and Wire Facilities and which expenses are allocated pursuant to Sections 36.154-.157, 36.361(b), 69.304, 69.305, and 69.401(f).

6071 Cable and Wire Facilities investment used to allocate associated depreciation expenses pursuant to Sections 36.154-.157, 36.361(b), 69.304, 69.305, and 69.401(f).

6080 Depreciation expenses of Plant Held for Future Telecommunications Use and which expenses are allocated pursuant to Sections 36.171(a), 36.361(b), 69.302(b), and 69.401(f).

6081 Investment in Property Held for Future Telecommunications Use used to allocate associated depreciation expenses pursuant to Sections 36.171(a), 36.361(b), 69.302(b), and 69.401(f).

6090 Total depreciation of Telecommunications Plant in Service, total of rows 6020, 6030, 6040, 6050, 6060, 6070, and 6080.

b) Amortization Expenses of Tangible Assets

(1) Amortization Expenses of Capital Leases

6100 Amortization expenses of capital leases associated with General Support Facilities and which expenses are allocated pursuant to Sections 36.112, 36.361(b), 69.307, and 69.401(f).

6101 General Support Facilities investment used to allocate amortization expenses of associated capital leases pursuant to Sections 36.112, 36.361(b), 69.307, and 69.401(f).

6110 Amortization expenses of capital leases that are associated with Switching Equipment and which expenses are allocated pursuant to Sections 36.124, 36.125, 36.361(b), 69.306(c) and (d), and 69.401(f).

6111 Switching Equipment investment used to allocate amortization expenses of associated capital leases pursuant to Sections 36.124, 36.125, 36.361(b), 69.306(c) and (d), and 69.401(f).

6120 Amortization expenses of capital leases that are associated with Operator Systems Equipment and which expenses are allocated pursuant to Sections 36.124, 36.361(b), 69.306(b), and 69.401(f).

6121 Operator Systems investment used to allocate amortization expenses of associated capital leases pursuant to Sections 36.124, 36.361(b), 69.306(b), and 69.401(f).

6130 Amortization expenses of capital leases that are associated with Transmission Equipment and which expenses are allocated pursuant to Sections 36.126, 36.361(b), 69.306(e), and 69.401(f).

6131 Transmission Equipment investment used to allocate amortization expenses of associated capital leases pursuant to Sections 36.126, 36.361(b), 69.306(e), and 69.401(f).

6140 Amortization expenses of capital leases that are associated with Information Origination/Termination equipment and which expenses are allocated pursuant to Sections 36.142, 36.361(b), 69.303, and 69.401(f).

6141 Information Origination/Termination equipment investment used to allocate amortization expenses of associated capital leases pursuant to Sections 36.142, 36.361(b), 69.303, and 69.401(f).

6150 Amortization expenses of capital leases that are associated with Cable and Wire Facilities and which expenses are allocated pursuant to Sections 36.154-.157, 36.361(b), 69.304, 69.305, and 69.401(f).

6151 Cable and Wire Facilities investment used to allocate amortization expenses of associated capital leases pursuant to Sections 36.154-.157, 36.361(b), 69.304, 69.305, and 69.401(f).

6160 Total amortization expenses of capital leases, total of rows 6100, 6110, 6120, 6130, 6140, and 6150.

(2) Amortization Expenses of Leasehold Improvements

6170 Amortization expenses of leasehold improvements associated with General Support Facilities and which expenses are allocated pursuant to Sections 36.112, 36.361(b), 69.307, and 69.401(f).

6171 General Support Facilities investment used to allocate amortization expenses of associated leasehold improvements pursuant to Sections 36.112, 36.361(b), 69.307, and 69.401(f).

6180 Amortization expenses of leasehold improvements that are associated with Switching Equipment and which expenses are allocated pursuant to Sections 36.124, 36.125, 36.361(b), 69.306(c) and (d), and 69.401(f).

6181 Switching Equipment investment used to allocate amortization expenses of associated leasehold improvements pursuant to Sections 36.124, 36.125, 36.361(b), 69.306(c) and (d), and 69.401(f).

6190 Amortization expenses of leasehold improvements associated with Operator Systems Equipment and which expenses are allocated pursuant to Sections 36.124, 36.361(b), 69.306(b), and 69.401(f).

6191 Operator Systems Equipment investment used to allocate amortization expenses of associated leasehold improvements pursuant to Sections 36.124, 36.361(b), 69.306(b), and 69.401(f).

6200 Amortization expenses of leasehold improvements that are associated with Transmission Equipment and are allocated pursuant to Sections 36.126, 36.361(b), 69.306(e), and 69.401(f).

6201 Transmission Equipment investment used to allocate amortization expenses of associated leasehold improvements pursuant to Sections 36.126, 36.361(b), 69.306(e), and 69.401(f).

6210 Amortization expenses of leasehold improvements that are associated with Information Origination/Termination Equipment and which expenses are allocated pursuant to Sections 36.142, 36.361(b), 69.303, and 69.401(f).

6211 Information Origination/Termination Equipment investment used to allocate amortization expenses of associated leasehold improvements pursuant to Sections 36.142, 36.361(b), 69.303, and 69.401(f).

6220 Amortization expenses of leasehold improvements that are associated with Cable and Wire Facilities and which expenses are allocated pursuant to Sections 36.154-.157, 36.361(b), 69.304, 69.305, and 69.401(f).

6221 Cable and Wire Facilities investment used to allocate amortization expenses of associated leasehold improvements pursuant to Sections 36.154-.157, 36.361(b), 69.304, 69.305, and 69.401(f).

6230 Total amortization expenses of leasehold improvements, total of rows 6170, 6180, 6190, 6200, 6210, and 6220.

6240 Total amortization expenses of Tangible Assets, total of rows 6160 and 6230.

(3) Other Depreciation and Amortization Expenses

6250 Amortization expenses of Intangible Assets that are allocated pursuant to Sections 36.361 and 69.401(f).

6251 Intangible Assets used to allocate amortization expenses of Intangible Assets pursuant to Sections 36.361 and 69.401(f).

6252 Other depreciation and amortization expenses that are allocated pursuant to Sections 36.361 and 69.401(f).

6253 Associated investment used to allocate other depreciation and amortization expenses pursuant to Sections 36.361 and 69.401(f).

6254 Total other depreciation and amortization expenses, total of rows 6250 and 6252.

6260 Total depreciation and amortization expenses, total of rows 6090, 6240, and 6254.

6270 Total Plant Non-Specific, total of rows 6000, 6010, 6012, and 6260.

C. Customer Operations Expenses

1. Marketing Expenses

7000 Marketing Expenses that are allocated pursuant to Sections 36.372, 69.309, and 69.403.

7001 Current billings analysis used to allocate Marketing Expenses pursuant to Section 36.372.

7002 Combined investment used to allocate Marketing Expenses pursuant to Sections 69.309 and 69.403.

2. Services Expenses

a) Telephone Operator Services Expenses

NOTE: Rows 7010 through 7041 provide Part 36 detail and rows 7050 through 7052 provide Part 69 detail.

Part 36 Detail

7010 Call completion services expenses that are allocated pursuant to Section 36.374(b).

7011 Weighted standard work seconds used to allocate call completion services pursuant to Section 36.374(b).

7020 Intercept services expenses that are allocated pursuant to Section 36.374(b).

7021 Weighted standard work seconds used to allocate intercept services expenses pursuant to Section 36.374(b).

7030 Directory assistance expenses that are allocated pursuant to Section 36.374(b).

7031 Weighted standard work seconds used to allocate directory assistance expenses pursuant to Section 36.374(b).

7040 Other Telephone Operator Expenses that are allocated pursuant to Section 36.374(b).

7041 Weighted standard work seconds used to allocate Other Telephone Operator Expenses pursuant to Section 36.374(b).

Part 69 Detail

7050 Telephone Operator Services Expenses that are directly assigned pursuant to Section 69.404.

7051 Telephone Operator Services Expenses that are allocated pursuant to Section 69.404.

7052 Weighted standard work seconds used to allocate Telephone Operator Services Expenses pursuant to Section 69.404.

7060 Total Telephone Operator Services Expenses, total of rows 7010, 7020, 7030, 7040, 7050, and 7051. Exception: for Column d, include in total only rows 7010, 7020, 7030, and 7040.

b) Published Directory Listing Expenses

7070 Classified directory expenses that are directly assigned pursuant to Section 36.375(b)(1).

7071 TWX directory expenses that are allocated pursuant Section 36.375(b)(2) and are directly assigned pursuant to Section 69.405(a).

7072 TWX minutes-of-use used to allocate TWX directory expenses pursuant to Section 36.375(b)(2).

7073 Expense of alphabetical and street address directories and traffic information records that are allocated pursuant to Sections 36.375(b)(3) and are directly assigned pursuant to Section 69.405(a).

7074 Subscriber line minutes-of-use to allocate the expense of alphabetical and street address directories and traffic information records pursuant to Section 36.375(b)(3).

7075 Expenses associated with foreign directories that are directly assigned pursuant to Sections 36.375(b)(4) and 69.405(a).

7076 Total Published Directory Listing Expenses, total of rows 7070, 7071, 7073, and 7075.

c) All Other Services Expenses

(1) Category 1 - Local Business Office Expense

NOTE: Rows 7080 through 7201 provide Part 36 detail and rows 7202 through 7214 provide Part 69 detail.

Part 36 Detail

(a) End User Service Order Processing Expenses

7080 Total weighted actual contacts used to determine the amount of end user service order processing expenses pursuant to Section 36.377(a)(1).

7081 Weighted actual contacts used to determine the amount of local end user service order processing expenses pursuant to Section 36.377(a)(1).

7082 Weighted actual contacts used to determine the amount of presubscription end user service order processing expenses pursuant to Section 36.377(a)(1).

7083 Weighted actual contacts used to determine the amount of directory advertising end user service order processing expenses pursuant to Section 36.377(a)(1).

7084 Weighted actual contacts used to determine the amount of state private line and special access end user service order processing expenses pursuant to Section 36.377(a)(1).

7085 Weighted actual contacts used to determine the amount of interstate private line and special access end user service order processing expenses pursuant to Section 36.377(a)(1).

7086 Weighted actual contacts used to determine the amount of state message toll, including WATS, end user service order processing expenses pursuant to Section 36.377(a)(1).

7087 Weighted actual contacts used to determine the amount of interstate message toll, including WATS, end user service order processing expenses pursuant to Section 36.377(a)(1).

7088 Weighted actual contacts used to determine the amount of TWX end user service order processing expenses pursuant to Section 36.377(a)(1).

7089 Local end user service order processing expenses that are directly assigned pursuant to Section 36.377(a)(1)(i).

7090 Presubscription end user service order processing expenses that are directly assigned pursuant to Section 36.377(a)(1)(ii).

7091 Directory advertising end user service order expenses that are directly assigned pursuant to Section 36.377(a)(1)(iii).

7092 Private line and special access end user service order processing expenses that are directly assigned pursuant to Sections 36.377(a)(1)(iv) and (v).

7093 Other message toll, including WATS, end user service order processing expenses that are directly assigned pursuant to Sections 36.377(a)(1)(vi) and (vii).

7094 TWX end user service order processing expenses that are allocated pursuant to Section 36.377(a)(1)(viii).

7095 Billed TWX revenues that are used to allocate TWX end user service order processing expenses pursuant to Section 36.377(a)(1)(viii).

7096 Total end user service order processing expenses, total of rows 7089, 7090, 7091, 7092, 7093, and 7094.

(b) End User Payment and Collection Expenses

7100 Total billed revenues used to determine the amount of end user payment and collection expenses pursuant to Section 36.377(a)(2).

7101 Billed revenues used to determine the amount of state private line and special access end user payment and collection expenses pursuant to Section 36.377(a)(2).

7102 Billed revenues used to determine the amount of interstate private line and special access end user payment and collection expenses pursuant to Section 36.377(a)(2).

7103 Billed revenues used to determine the amount of state message toll, including WATS, end user payment and collection expenses pursuant to Section 36.377(a)(2).

7104 Billed revenues used to determine the amount of interstate message toll, including WATS and the interstate subscriber line charge, end user payment and collection expenses pursuant to Section 36.377(a)(2).

7105 Billed revenues used to determine the amount of local, including directory advertising, end user payment and collection expenses pursuant to Section 36.377(a)(2).

7106 Billed revenues used to determine the amount of TWX end user payment and collection expenses pursuant to Section 36.377(a)(2).

7107 Private line and special access end user payment and collection expenses that are directly assigned pursuant to Sections 36.377(a)(2)(i) and (ii).

7108 Message toll, including WATS and the interstate subscriber line charge, end user payment and collection expenses that are directly assigned pursuant to Sections 36.377(a)(2)(iii) and (iv).

7109 Local, including directory advertising, end user payment and collection expenses that are directly assigned pursuant to Section 36.377(a)(2)(v).

7110 TWX end user payment and collection expenses that are allocated pursuant to Section 36.377(a)(2)(vi).

7111 Billed TWX revenues used to allocate TWX end user payment and collection expenses pursuant to Section 36.377(a)(2)(vi).

7112 Total end user payment and collection expenses, total of rows 7107, 7108, 7109, and 7110.

(c) End User Billing Inquiry Expenses

7120 Total weighted actual contacts used to determine the amount of end user billing inquiry expenses pursuant to Section 36.377(a)(3).

7121 Weighted actual contacts used to determine the amount of state private line and special access end user billing inquiry expenses pursuant to Section 36.377(a)(3).

7122 Weighted actual contacts used to determine the amount of interstate private line and special access end user billing inquiry expenses pursuant to Section 36.377(a)(3).

7123 Weighted actual contacts used to determine the amount of state message toll, including WATS, end user billing inquiry expenses pursuant to Section 36.377(a)(3).

7124 Weighted actual contacts used to determine the amount of interstate message toll, including WATS and the interstate subscriber line charge, end user billing inquiry expenses pursuant to Section 36.377(a)(3).

7125 Weighted actual contacts used to determine the amount of TWX end user billing inquiry expenses pursuant to Section 36.377(a)(3).

7126 Weighted actual contacts used to determine the amount of other end user billing inquiry expenses pursuant to Section 36.377(a)(3).

7127 Private line and special access end user billing inquiry expenses that are directly assigned pursuant to Sections 36.377(a)(3)(i) and (ii).

7128 Message toll, including WATS and the interstate subscriber line charge, end user billing inquiry expenses that are directly assigned pursuant to Sections 36.377(a)(3)(iii) and (iv).

7129 TWX billing inquiry expenses that are allocated pursuant to Section 36.377(a)(3)(v).

7130 TWX billed revenues used to allocate TWX billing inquiry expenses pursuant to Section 36.377(a)(3)(v).

7131 Other billing inquiry expenses that are directly assigned pursuant to Section 36.377(a)(3)(vi).

7132 Total end user billing inquiry expenses, total of rows 7127, 7128, 7129, and 7131.

(d) Interexchange Carrier Service Order Processing Expenses

7140 Total weighted actual contacts used to determine the amount of interexchange carrier service order processing expenses pursuant to Section 36.377(a)(4).

7141 Weighted actual contacts used to determine the amount of state private line and special access interexchange carrier service order processing expenses pursuant to Section 36.377(a)(4).

7142 Weighted actual contacts used to determine the amount of interstate private line and special access interexchange carrier service order processing expenses pursuant to Section 36.377(a)(4).

7143 Weighted actual contacts used to determine the amount of state switched access and message toll, including WATS, interexchange carrier service order processing expenses pursuant to Section 36.377(a)(4).

7144 Weighted actual contacts used to determine the amount of interstate switched access and message toll, including WATS, interexchange carrier service order processing expenses pursuant to Section 36.377(a)(4).

7145 Weighted actual contacts used to determine the amount of state billing and collection interexchange carrier service order processing expenses pursuant to Section 36.377(a)(4).

7146 Weighted actual contacts used to determine the amount of interstate billing and collection interexchange carrier service order processing expenses pursuant to Section 36.377(a)(4).

7147 Private line and special access interexchange carrier service order processing expenses that are directly assigned pursuant to Sections 36.377(a)(4)(i) and (ii).

7148 Switched access and message toll, including WATS, interexchange carrier service order processing expenses that are directly assigned pursuant to Sections 36.377(a)(4)(iii) and (iv).

7149 Billing and collection interexchange carrier service order processing expenses that are directly assigned pursuant to Sections 36.377(a)(4)(v) and (vi).

7150 Total interexchange carrier service order processing expenses, total of rows 7147, 7148, and 7149.

(e) Interexchange Carrier Payment and Collection Expenses

7160 Total billed revenues used to determine the amount of interexchange carrier payment and collection expenses pursuant to Section 36.377(a)(5).

7161 Billed revenues used to determine the amount of state special access and private line interexchange carrier payment and collection expenses pursuant to Section 37.377(a)(5).

7162 Billed revenues used to determine the amount of interstate special access and private line interexchange carrier payment and collection expenses pursuant to Section 36.377(a)(5).

7163 Billed revenues used to determine the amount of state switched access and message toll, including WATS, interexchange carrier payment and collection expenses pursuant to Section 36.377(a)(5).

7164 Billed revenues used to determine the amount of interstate switched access and message toll, including WATS, interexchange carrier payment and collection expenses pursuant to Section 36.377(a)(5).

7165 Billed revenues used to determine the amount of state billing and collection interexchange carrier payment and collection expenses pursuant to Section 36.377 (a)(5).

7166 Billed revenues used to determine the amount of interstate billing and collection interexchange carrier payment and collection expenses pursuant to Section 36.377(a)(5).

7167 Private line and special access interexchange carrier payment and collection expenses that are directly assigned pursuant to Sections 36.377(a)(5)(i) and (ii).

7168 Switched access and message toll, including WATS, interexchange carrier payment and collection expenses that are directly assigned pursuant to Sections 36.377(a)(5)(iii) and (iv).

7169 Billing and collection interexchange carrier payment and collection expenses that are directly assigned pursuant to Sections 36.377(a)(5)(v) and (vi).

7170 Total interexchange carrier payment and collection expenses, total of rows 7167, 7168, and 7169.

(f) Interexchange Carrier Billing Inquiry Expenses

7180 Total weighted actual contacts used to determine the amount of interexchange carrier billing inquiry expenses pursuant to Section 36.377(a)(6).

7181 Weighted actual contacts used to determined the amount of state special access and private line interexchange carrier billing inquiry expenses pursuant to Section 36.377(a)(6).

7182 Weighted actual contacts used to determined the amount of interstate special access and private line interexchange carrier billing inquiry expenses pursuant to Section 36.377(a)(6).

7183 Weighted actual contacts used to determined the amount of state switched access and message toll, including WATS, interexchange carrier billing inquiry expenses pursuant to Section 36.377(a)(6).

7184 Weighted actual contacts used to determine the amount of interstate switched access and message toll, including WATS, interexchange carrier billing inquiry expenses pursuant to Section 36.377(a)(6).

7185 Weighted actual contacts used to determine the amount of state billing and collection interexchange carrier billing inquiry expenses pursuant to Section 36.377(a)(6).

7186 Weighted actual contacts used to determine the amount of interstate billing and collection interexchange carrier billing inquiry expenses pursuant to Section 36.377(a)(6).

7187 Private line and special access interexchange carrier billing inquiry expenses that are directly assigned pursuant to Sections 36.377(a)(6)(i) and (ii).

7188 Switched access and message toll, including WATS, interexchange carrier billing inquiry expenses that are directly assigned pursuant to Sections 36.377(a)(6)(iii) and (iv).

7189 Billing and collection interexchange carrier billing inquiry expenses that are directly assigned pursuant to Sections 36.377(a)(6)(v) and (vi).

7190 Total interexchange carrier billing inquiry expenses, total of rows 7187, 7188, and 7189.

(g) Coin Collection and Administration Expenses

7200 Coin collection and administration expenses that are allocated pursuant to Section 36.377(a)(7).

7201 Revenues deposited that are used to allocate coin collection and administration expenses pursuant to Section 36.377(a)(7).

Part 69 Detail

7202 End user service order processing, payment and collection, and billing inquiry expenses attributable to the company's own private line services that are directly assigned pursuant to Section 69.406(a)(2).

7203 End user service order processing, payment and collection, and billing inquiry expenses attributable to the company's own message toll services that are directly assigned pursuant to Section 69.406(a)(4).

7204 End user service order processing, payment and collection, and billing inquiry expenses attributable to interexchange carriers' private line services that are directly assigned pursuant to Section 69.406(a)(3).

7205 End user service order processing, payment and collection, and billing inquiry expenses attributable to interexchange carriers' message toll services that are directly assigned pursuant to Section 69.406(a)(4).

7206 End user payment and collection and billing inquiry expenses attributable to end user common line access (Subscriber Line Charge) billing that is directly assigned to pursuant to Section 69.406(a)(4).

7207 End user service order processing expenses attributable to presubscription that are allocated pursuant to Section 69.406(a)(1).

7208 Combined investment used to allocate end user service order processing expenses attributable to presubscription pursuant to Sections 69.309 and 69.406(a)(1).

7209 End user service order processing, payment and collection, and billing inquiry expenses attributable to TWX that are directly assigned to pursuant to Section 69.406(a)(5).

7210 Interexchange carrier service order processing, payment and collection, and billing inquiry expenses attributable to private line services that are directly assigned pursuant to Section 69.406(a)(6).

7211 Interexchange carrier service order processing, payment and collection, and billing inquiry expenses attributable to switched access and message toll services that are allocated pursuant to Section 69.406(a)(7).

7212 Combined investment used to allocate interexchange carrier service order processing, payment and collection, and billing inquiry expenses attributable to switched access and message toll services pursuant to Sections 69.309 and 69.406(a)(7).

7213 Interexchange carrier service order processing, payment and collection, and billing inquiry expenses attributable to billing and collection services that are directly assigned pursuant to Section 69.406(a)(8).

7214 Coin collection and administration expenses that are directly assigned pursuant to Section 69.406(a)(9).

7220 Total Category 1, Local Business Office Expenses, total of rows 7096, 7112, 7132, 7150, 7170, 7190, 7200, 7202, 7203, 7204, 7205, 7206, 7207, 7209, 7210, 7211, 7213, and 7214. Exception: for Column d, include in total only rows 7096, 7112, 7132, 7150, 7170, 7190, and 7200.

(2) Category 2 - Customer Services Expenses (Revenue Accounting)

NOTE: Rows 7230 through 7270 provide Part 36 detail and rows 7280 through 7283 provide Part 69 detail.

Part 36 Detail

(a) Message Processing Expenses

7230 Total messages that are used to determine the amount of message processing expenses pursuant to Section 36.379(a).

7231 Toll messages that are used to determine the amount of toll ticket processing expenses pursuant to Section 36.379(a).

7232 Local messages that are used to determine the amount of local message processing expenses pursuant to Section 36.379(a).

7233 Toll ticket processing expenses that are allocated pursuant to Section 36.379(b).

7234 Toll messages used to allocate toll ticket processing expenses pursuant to Section 36.379(b).

7235 Local message processing expenses that are directly assigned pursuant to Section 36.379(b).

7236 Total message processing expenses, total of rows 7233 and 7235.

(b) Other Billing and Collecting Expenses

1984 Users

7240 Total users for 1984 used to determine the allocation of Other Billing and Collecting Expenses pursuant to Section 36.380(b)(1)(i).

7241 Interstate message toll users for 1984 used to determine the allocation of Other Billing and Collecting Expenses pursuant to Section 36.380(b)(1)(i).

7242 Interstate private line users for 1984 used to determine the allocation of Other Billing and Collecting Expenses pursuant to Section 36.380(b)(1)(i).

7243 Interstate TWX users for 1984 used to determine the allocation of Other Billing and Collecting Expenses pursuant to Section 36.380(b)(1)(i).

7244 Exchange users for 1984 used to determine the allocation of Other Billing and Collecting Expenses pursuant to Section 36.380(b)(1)(i).

7245 State message toll users for 1984 used to determine the allocation of Other Billing and Collecting Expenses pursuant to Section 36.380(b)(1)(i).

7246 State private line users for 1984 used to determine the allocation of Other Billing and Collecting Expenses pursuant to Section 36.380(b)(1)(i).

7247 Directory advertising users for 1984 used to determine the allocation of Other Billing and Collecting Expenses pursuant to Section 36.380(b)(1)(i).

7248 State TWX users for 1984 used to determine the allocation of Other Billing and Collecting Expenses pursuant to Section 36.380(b)(1)(i).

1987 Users

7250 Total users for 1987 used to determine the allocation of Other Billing and Collecting Expenses pursuant to Section 36.380(b)(1)(ii).

7251 Interstate message toll users for 1987 used to determine the allocation of Other Billing and Collecting Expenses pursuant to Section 36.380(b)(1)(ii).

7252 Interstate private line users for 1987 used to determine the allocation of Other Billing and Collecting Expenses pursuant to Section 36.380(b)(1)(ii).

7253 Interstate TWX users for 1987 used to determine the allocation of Other Billing and Collecting Expenses pursuant to Section 36.380(b)(1)(ii).

7254 Exchange users for 1987 used to determine the allocation of Other Billing and Collecting Expenses pursuant to Section 36.380(b)(1)(ii).

7255 State message toll users for 1987 used to determine the allocation of Other Billing and Collecting Expenses pursuant to Section 36.380(b)(1)(ii).

7256 State private line users for 1987 used to determine the allocation of Other Billing and Collecting Expenses pursuant to Section 36.380(b)(1)(ii).

7257 Directory advertising users for 1987 used to determine the allocation of Other Billing and Collecting Expenses pursuant to Section 36.380(b)(1)(ii).

7258 State TWX users for 1987 used to determine the allocation of Other Billing and Collecting Expenses pursuant to Section 36.380(b)(1)(ii).

7259 Other Billing and Collecting Expenses that are allocated pursuant to Section 36.380(b)(1).

7260 Allocation factor (in percent) used to allocate Other Billing and Collecting Expenses pursuant to Sections 36.380(b)(1)(iii) and (iv).

(c) Carrier Access Charge Billing and Collecting Expenses

7270 Carrier access charge billing and collecting expenses that are allocated pursuant to Section 36.381(b).

Part 69 Detail

7280 Revenue Accounting Expenses that are attributable to End User Common Line access (Subscriber Line Charge) billings that are directly assigned pursuant to Section 69.407(a).

7281 Revenue Accounting Expenses that are attributable to a carrier's carrier access billing and collecting expenses and are allocated pursuant to Section 69.407(b).

7282 Investment in COE, IOT, and C&WF used to allocate Revenue Accounting Expenses that are attributed to the carrier's carrier access billing and collecting expenses (except that no such Revenue Accounting Expenses are allocated to the Common Line element) pursuant to Section 69.407(b).

7283 All Other Revenue Accounting Expenses that are directly assigned pursuant to Section 69.407(c).

7290 Total Category 2, Customer Services (Revenue Accounting), total of rows 7236, 7259, 7270, 7280, 7281, and 7283. Exception: for Column d, include in total only rows 7236, 7259, and 7270.

(3) Category 3 - All Other Customer Services Expenses

7300 All Other Customer Services expenses that are allocated pursuant to Sections 36.382(a) and 69.408(a).

7301 Total Categories 1 and 2 Customer Services Expenses that are used to allocate Category 3 pursuant to Section 36.381(a).

7302 Combined expenses that are used to allocate All Other Customer Services Expenses pursuant to Section 69.408(a).

7310 Total Customer Services Expenses, total of rows 7220, 7290, and 7300.

7320 Total Customer Operations Expenses, total of rows 7000, 7060, 7076, 7220, 7290, and 7300.

D. Corporate Operations Expenses

7330 Extended Area Services settlements that are directly assigned pursuant to Section 36.392(b).

7331 All Other Corporate Operations Expenses that are allocated pursuant to Section 36.392(c).

7332 Part 36 Big Three Expenses that are used to allocate All Other Corporate Operations Expenses pursuant to Section 36.392(c).

7333 Part 69 Big Three Expenses used to allocate All Other Corporate Operations Expenses pursuant to Section 69.409(a).

7334 Total Corporate Operations Expenses, total of rows 7330 and 7331.

E. FCC Expense Adjustment

7350 FCC expense adjustment is the net of the following: (1) expenses not included above that the FCC has expressly allowed for ratemaking purposes; and (2) expenses included above that the FCC has expressly disallowed for ratemaking purposes. See Sections 65.450, 65.820, and 65.830.

7351 Total Operating Expenses, total of rows 84 or 92, 5080, 6270, 7320, and 7334, minus row 7350. NOTE: Carriers must include amounts on row 84 or 92.

F. Operating Taxes

1. State and Local Taxes

8000 State and local income taxes that are allocated pursuant to Sections 36.412(b) and 69.402(a).

8001 Approximate net taxable income used to allocate state and local taxes pursuant to Sections 36.412(b) and 69.402(a).

8002 Other state and local taxes that are directly assigned pursuant to Section 36.412(c).

8003 All other state and local taxes that are allocated pursuant to Section 36.412(c)

8004 Telecommunications Plant in Service used to allocate all other state and local taxes pursuant to Section 36.412(c).

8005 Total other state and local taxes that are allocated pursuant to Section 69.402(b).

8006 Combined investment used to allocate other state and local taxes pursuant to Section 69.402(b).

8007 Total state and local taxes, total of rows 8000, 8002, 8003, and 8005. Exception: for Column d, include in total only rows 8000, 8002, and 8003.

2. Federal Income Tax

a) Federal Income Tax Related Items

8010 Fixed charges that are subtracted in the calculation of approximate net taxable income pursuant to Sections 36.223(a), 36.412(b)(4) and 69.411(a).

8011 Net investment used to allocate fixed charges pursuant to Section 36.412(b)(4).

8012 Combined investment used to allocate fixed charges pursuant to Section 69.411(a).

8013 Internal Revenue Service Income adjustment that is the difference between taxable income reported for Internal Revenue Service purposes and taxable income reported for federal regulatory purposes. See Report 43-01, Table I, Row 1510.

8014 FCC taxable income adjustment that is the net of the following: (1) taxable income not included above that the FCC has expressly allowed for ratemaking purposes; and (2) taxable income included above that the FCC has expressly disallowed for ratemaking purposes. See Report 43-01, Table I, Row 1520.

8015 Investment Tax Credit amortization that is the net amortization associated with Account 7210, Operating Investment Tax Credits. See Section 32.7210; Report 43-01, Table I, Row 1530.

8016 Telecommunications Plant in Service that is used to allocate Investment Tax Credit amortization pursuant to Section 36.412(c).

8017 Combined investment that is used to allocate Investment Tax Credit amortization pursuant to Section 69.411(a).

8018 FCC Investment Tax Credit which is the net of the following: (1) Investment Tax Credit not included above that the FCC has expressly allowed for ratemaking purposes, and (2) the investment Tax Credit included above that FCC has expressly disallowed for ratemaking purposes. See Report 43-01, Table I, Row 1590.

b) Federal Income Tax

8020 Federal income tax that is allocated pursuant to Section 36.412(b).

8021 Approximate net taxable income used to allocate Federal Income Tax pursuant to Sections 36.412(b) and 69.402(a) and which is row 4120, less rows 7351 and 8007 and net of rows 8010, 8013, 8014, 8015, and 8018.

8030 Total Operating Taxes, total of rows 8007 and 8020.

VII. Return Data

8040 Average net investment which is the equivalent of the average net investment for each month in the reporting period divided by the number of months in the reporting period. See Report 43-01, Table I, Row 1910.

8041 Net Return. See Report 43-01, Table I, Row 1915.

8042 Rate of Return (in percent) which is Net Return divided by Average Net Investment. See Report 43-01, Table I, Row 1920.

8043 FCC Refund which is developed in accordance with CC Docket No. 84-800. See Report 43-01, Table I, Row 1925.

8044 Net Return including FCC Refund. See Report 43-01, Table I, Row 1930.

8045 Rate of Return including FCC Refund (in percent). See Report 43-01, Table I, Row 1935.

VIII. Other Data

9000 Carrier Common Line transitional support which is the amount received or disbursed pursuant to Section 69.612(b). See Report 43-01, Table I, Row 1960.

9001 Carrier Common Line long term support which is the amount received or disbursed pursuant to Section 69.612(a). See Report 43-01, Table I, Row 1950.

9002 Universal Service Fund expense allocation which is calculated pursuant to Sections 36.601-.641.

9003 Study area unseparated loop cost which is used to determine the Universal Service Fund expense allocation and is calculated pursuant to Section 36.621(a).

9004 Study area working loops that are used to calculate the Universal Service Fund expense allocation pursuant to Section 36.611(a)(8).

9005 Study area average unseparated loop cost per working loop which is the study area unseparated loop cost (row 9003) divided by the number of study area working loops (row 9004) pursuant to Section 36.622(b).

9006 Lifeline Connection Assistance expense allocation which is calculated pursuant to Sections 36.701-.741.

9007 Number of households in the study area receiving Lifeline Connection Assistance pursuant to Section 36.711(b).

9008 Average discount on commencement of service charges per household pursuant to Section 36.711(a)(1).

9009 Average deferred charges per household for the commencement of service for which the company charges no interest pursuant to Section 36.711(a)(2).

9010 Total billable access lines in study area which is calculated according to the method described in FCC Report 43-01, Table II, Rows 2090 through 2150.

GLOSSARY

This glossary consists of all abbreviations and abbreviated phrases, in alphabetical order, used on the FCC Report 43-04. Each abbreviation or abbreviated phrase is immediately followed by the complete word or phrase.

AFUDC - Allowance for Funds Used During Construction

Acc Amort - Accumulated Amortization

Acc Depr - Accumulated Depreciation

All Oth St & Lcl - All Other State and Local

All Other Cat 2 - All Other Category 2

All Other M&S - All Other Material and Supplies

All Other Misc - All Other Miscellaneous

Alloc Cap Lease - Allocated Capital Leases

Alloc Factor - Allocation Factor

Allocated C&WF - Allocated Cable and Wire Facilities

Allocated GSF - Allocated General Support Facilities

Allocated IOT - Allocated Information Origination/Termination

Allocated Op Sys - Allocated Operator Systems

Allocated Switch - Allocated Switching

Allocated Trans - Allocated Transmission

Alpha/Traffic - Alphabetical and Street Address Directories and Traffic Information Records

Amort Ass - Amortizable Assets

Appr Tax Inc - Approximate Taxable Income

Assd Inv - Associated Investment

Auxiliary DA - Auxiliary Boards Directory Assistance

Auxiliary Intct/AIS - Auxiliary Intercept/Automated Intercept Systems

Average Net Inv - Average Net Investment

Avg Balance for Yr - Average Balance for the Current Year

BAF - Base Allocation Factor

BFP - Base Factor Portion

Big 3 Exp - Big Three Expenses

Big 3 Exp Cls A - Big Three Expenses Class A

Bill TWX Rev - Billed TWX Revenues

Billing & Coll - Billing and Collection

C&WF - Cable and Wire Facilities

C&WF Eqpt - Cable and Wire Facilities Equipment

C&WF Expenses - Cable and Wire Facilities Expenses

C&WF Inv - Cable and Wire Facilities Investment

CAF - Composite Allocation Factor

CCL-Long Term - Carrier Common Line Long Term Support

CCL-Transitional - Carrier Common Line Transitional Support

CM - Conversation Minutes

CMM - Conversation Minute Miles

CO Exp - Central Office Expenses

COE - Central Office Equipment

COE 1, 2 & 3 - Central Office Equipment Categories 1, 2 & 3

COE Inv - Central Office Equipment Investment

COE Switch - Central Office Equipment-Switching

COE/IOT/C&WF - Central Office Equipment, Information Origination/Termination and Cable and Wire Facilities

CPE - Customer Premises Equipment

CPE M&S - Customer Premises Equipment Material and Supplies

CWC - Cash Working Capital

Cap Leases - Capital Leases

Classified Dir - Classified Directories

Cls B RTB Stk - Class B Rural Telephone Bank Stock

Coin Coll & Adm - Coin Collection and Administration

Coinless Pay - Coinless Pay Telephone Equipment

Comb Lcl Toll - Combined Local and Toll Boards

Comb Toll/DSA - Combined Toll and DSA Boards

Combined Exp - Combined Expenses

Combined Inv - Combined Investment

Composite Alloc - Composite Allocator

Connect Minutes - Connection Minutes

Corp Op Exp - Corporate Operations Expenses

Cost Per Cir Mi - Cost Per Circuit Mile

Cost Per Term - Cost Per Termination

Ct Def Inc Tax - Current Deferred Income Tax

Curr Bill Anal - Current Billing Analysis

Current ATSPF - Current Adjusted Transitional Subscriber Plant Factor

Cust Dep - Customer Deposits

DA - Directory Assistance

DA WSWS - Director Assistance Weighted Standard Work Seconds

DChg Beg Bal - Deferred Charges Beginning Balance

DEM - Dial Equipment Minutes of Use

DSA - DSA Boards

DSA DA - DSA Boards Directory Assistance

DSA Intct/AIS - DSA Boards Intercept/Automated Intercept Systems

Def Int Per HH - Deferred Interest Per Household

Depr/Amort - Depreciation/Amortization

Dir Ad Svc Or - Directory Advertising Service Order Processing

Dir Ad Users - Directory Advertising Users

Dir Ad WAC - Directory Advertising Weighted Actual Contacts

Dir Msg Cir Mi - Directly Assigned Message Circuit Miles

Direct - Directly Assigned

Direct C&WF - Directly Assigned Cable and Wire Facilities

Direct IOT - Directly Assigned Information Origination/Termination

Direct Msg Term - Directly Assigned Message Terminations

Direct Op Sys - Directly Assigned Operator Systems

Direct Oth St&Lcl - Directly Assigned Other State and Local

Direct PL - Directly Assigned Private Line

Direct Switch - Directly Assigned Switching

Direct Trans - Directly Assigned Transmission

Discount Per HH - Discount Per Household

EA C&WF - Equal Access Cable and Wire Facilities

EA COE Cat 2 - Equal Access Central Office Equipment Category 2

EA COE Cat 3 - Equal Access Central Office Equipment Category 3

EA IOT - Equal Access Information/Origination Termination

EA Oth COE - Equal Access Other Central Office Equipment

EAS Settlements - Extended Area Service Settlements

EU Att to Co Msg - End User Attributable to Company Message

EU Att to Co PL - End User Attributable to Company Private Line

EU Att to IC Msg - End User Attributable to Interexchange Message

EU Att to IC PL - End User Attributable to Interexchange Carrier Private Line

EU Presub - End User Presubscription

EU SLC Bills - End User Subscriber Line Charge Billings

EU TWX - End User TWX

Equal Acc MOU - Equal Access Minutes of Use

Equiv Lines - Equivalent Lines

Exchange SOU - Exchange Service Observing Units

Extra Items - Extraordinary Items

FCC Expense Adj - Federal Communications Commission Expense Adjustment

FCC ITC Adj - Federal Communications Commission Income Tax Credit Adjustment

FCC Inc Adj - Federal Communications Commission Income Adjustment

FCC Inv Adj - Federal Communications Commission Investment Adjustment

FX Different - Foreign Exchange Differentials

FX-CCSA - Foreign Exchange-Common Control Switching Arrangement

Fed Inc Tax - Federal Income Tax

For Directories - Foreign Directories

Furn to Other - Interexchange Circuit Equipment Furnished to Another Company for Interstate Use

GSF - General Support Facilities

GSF Inv - Investment in General Support Facilities

General Supp - General Support

Genl Sup Fac - General Support Facilities

IAF - Interstate Allocation Factor

IC Att to PL - Interexchange Carrier Attributable to Private Line

IC B&C - Interexchange Carrier Billing and Collection

IC Switch & Msg - Interexchange Carrier Switching and Message

IOT - Information Origination/Termination

IOT Eqpt - Information Origination/Termination Equipment

IOT Expenses - Information Origination/Termination Expenses

IOT Inv - Information Origination/Termination Investment

IRS Inc Adj - Internal Revenue Service Income Adjustment

IS B&C - Interstate Billing and Collection

IS B&C Rev - Interstate Billing and Collection Revenues

IS B&C WAC - Interstate Billing and Collection Weighted Actual Contacts

IS Msg Bill Rev - Interstate Message Billed Revenues

IS Msg Users - Interstate Message Users

IS Msg WAC - Interstate Message Weighted Actual Contacts

IS PL Bill Rev - Interstate Billed Revenues

IS PL Rev - Interstate Private Line Revenues

IS PL Users - Interstate Private Line Users

IS PL WAC - Interstate Private Line Weighted Actual Contacts

IS Switch WAC - Interstate Switching Weighted Actual Contacts

IS Switched Rev - Interstate Switched Revenues

IS TWX Users - Interstate TWX Users

ITC Amort - Income Tax Credit Amortization

IX - Interexchange

Inc Effect - Income Effects of Jurisdictional Ratemaking Differences

Int WSWS - Intercept Weighted Standard Work Seconds

Int&Rel Items - Interest and Related Items

Intan Ass - Intangible Assets

Inv - Investment

Inv Cls B - Investment Class B

Joint - Jointly Used

Joint ASB - Joint Auxiliary Service Boards

Joint ASB Int - Joint Auxiliary Service Boards Intercept

Joint Cir Mi - Jointly Used Circuit Miles

Joint Msg Term - Jointly Used Message Terminations

Joint SOB - Joint Service Observing Boards

LAF - Loop Allocation Factor

LEC MOU - Local Exchange Carrier Minutes of Use

Land & Supp - Land and Supplies

Lcl Svc Or Proc - Local Service Order Processing

Lcl Svc Or WAC - Local Service Order Weighted Actual Contacts

Lifeline Connec - Lifeline Connections

Local Bill Rev - Local Billed Revenues

Local Msg Proc - Local Message Processing

Local Msgs - Local Messages

Local PL-Broad - Local Private Line-Broadcasting

Long Term PUC - Long Term Property Under Construction

M&S - Material and Supplies

MOU - Minutes of Use

MOU Miles - Minutes of Use Miles

Marketing Exp - Marketing Expense

Message Cir Mi - Message Circuit Miles

Msg Toll - Message Toll

Net Inv - Net Investment

Net Return Inc Ref - Net Return Including Refund

Network Oper - Network Operations

Network Supp - Network Support

New CPE - New Customer Premises Equipment

NonC Def Inc Tax - Non Current Deferred Income Tax

OB&C - Other Billing and Collection

Op Sys - Operator Systems

Op Sys Eqpt - Operator Systems Equipment

Operator TSPS - Operator Traffic Service Positions

Oth ASB DA - Other Auxiliary Service Boards Directly Assigned

Oth Accr Liab - Other Accrued Liabilities

Oth Cust Svc - Other Customer Service

Oth Def Crs - Other Deferred Credits

Oth Juris L&DCrs - Other Jurisdictional Liabilities and Deferred Credits

Oth Less Coinlss - Other Information Origination/Termination Equipment Less Coinless Equipment

Oth WSWS - Other Weighted Standard Work Seconds

Other Aux - Other Auxiliary

Other Cap Lease - Other Capital Leases

Other DA - Other Directory Assistance

Other DSA - Other DSA Boards

Other IOT - Other Information Origination/Termination

Other Inv - Other Investment

Other Jur Ass - Other Jurisdictional Assets

Other LD Msg - Other Long Distance Message

Other PP&E - Other Property Plant and Equipment

Other TSP - Other Traffic Service Position

Other TSPS - Other Traffic Service Position Systems

Other WAC - Other Weighted Actual Contacts

PHFTU - Property Held for Future Telecommunications Use

PHFTU/TPUC C&WF - Property Held for Future Telecommunications Use/Telephone Plant Under Construction, Cable and Wire Facilities

PHFTU/TPUC COE - Property Held for Future Telecommunications Use/Telephone Plant Under Construction, Central Office Equipment

PHFTU/TPUC GSF - Property Held for Future Telecommunications Use/Telephone Plant Under Construction, General Support Facilities

PL & Special - Private Line and Special

PL Cir Mi - Private Line Circuit Miles

PL Term - Private Line Terminations

PL/WATS - Private Line/WATS

PL/WATS Loops - Private Line/WATS Loops

Pay - Pay Telephone

Plant Cls B - Plant Class B

Presub Svc Or - Presubscription Service Order Processing

Presub WAC - Presubscription Weighted Actual Contacts

Prev Yr ATSPF - Previous Year Adjusted Transitional Subscriber Plant Factor

Proc Real Time - Processor Real Time

ROR Including Ref - Rate of Return Including Refund

RTA - Remote Trunk Arrangements

Remain Inv - Remaining Investment

Reserve Adj - Reserve Adjustment

Rev Deposited - Revenue Deposited

S Switched Rev - State Switched Revenues

SLC - Subscriber Line Charges

SPF - Subscriber Plant Factor

Sep Intct/AIS - Separate Intercept Boards and Automated Intercept Systems

Sep Toll SOB - Separate Toll Service Observing Boards

Separate DA - Separate Directory Assistance Boards

Separate DSB - Separate DSB Boards

Separate Lcl - Separate Local Manual Boards

Separate Toll SOB - Separate Toll Service Observing Boards

Services Exp - Services Expenses

Soc/Comm - Charitable, Social or Community Welfare

St & Lcl Inc - State and Local Income

St Msg Bill Rev - State Message Billed Revenues

St PL Bl Rev - State Private Line Billed Revenues

St Switch WAC - State Switching Weighted Actual Contacts

State B&C Rev - State Billing and Collection Revenue

State B&C WAC - State Billing and Collection Weighted Actual Contacts

State Msg Users - State Message Users

State Msg WAC - State Message Weighted Actual Contacts

State PL - State Private Line

State PL Rev - State Private Line Revenues

State PL Users - State Private Line Users

State PL WAC - State Private Line Weighted Actual Contacts

State Switch WAC - State Switching Weighted Actual Contacts

Sub Line MOU - Subscriber Line Minutes of Use

Sub/CL Loops - Subscriber/Common Line Loops

Sub/Common Lines - Subscriber/Common Lines

Svc Obser Unit - Service Observation Units

Switch Eqpt - Switching Equipment

Switched & Msg - Switched and Message

TPIS - Telecommunications Plant In Service

TPIS Less Intan - Telecommunications Plant In Service Less Intangibles

TPUC Long - Telecommunications Plant Under Construction-Long Term

TPUC Short - Telecommunications Plant Under Construction-Short Term

TSPS/CBC Units - Traffic Service Position Systems Associated with Common Basic Control Units

TWX - Teletypewriter Exchange Service

TWX Bill Rev - TWX Billed Revenues

TWX Cir Mi - TWX Circuit Miles

TWX MOU - TWX Minutes of Use

TWX Term - TWX Terminations

TWX WAC - TWX Weighted Actual Contacts

Tandem MOU - Tandem Minutes of Use

Tel Op Alloc - Telephone Operators' Services Allocated

Tel Op Direct - Telephone Operators' Services Directly Assigned

Tel Plant Adj - Telecommunications Plant Adjustment

Toll ASB - Toll Auxiliary Service Boards

Toll Aux - Toll Service Auxiliary Boards

Toll DSA - Toll Service DSA Boards

Toll MOU - Toll Minutes of Use

Toll Msgs - Toll Messages

Toll SOU - Toll Service Observing Units

Toll Ticket Proc - Toll Ticket Processing

Toll WSWS - Toll Weighted Standard Work Seconds

Tot 1984 Users - Total 1984 Users

Tot 1987 Users - Total 1987 Users

Tot Acc Am - Total Accumulated Amortization

Tot Acc Depr - Total Accumulated Depreciation

Tot All Other - Total All Other

Tot Am Tang - Total Amortization Expenses of Tangible Assets

Tot Bas 4.23 - Total Basic Category 4.23

Tot Bas Lcl - Total Basic Local Service

Tot Bas NonW - Total Basic NonWideband

Tot Basic 4.34 - Total Basic Catetory 4.34

Tot Bill Acc Lines - Total Billable Access Lines

Tot Bill Inq - Total Billing Inquiry

Tot Bill Rev - Total Billed Revenue

Tot C&WF - Total Cable and Wire Facilities

Tot C&WF Exp - Total Cable and Wire Facilities Expense

Tot CIE - Total Certain Income and Expenses

Tot CO Exp - Total Central Office Expenses

Tot COE - Total Central Office Equipment

Tot Cap Lease - Total Capital Leases

Tot Cat 1 - Total Category 1

Tot Cat 1 & 2 - Total Categories 1 and 2

Tot Cat 2 - Total Category 2

Tot Cat 3 - Total Category 3

Tot Cat 4 - Total Category 4

Tot Cat 4.1 - Total Category 4.1

Tot Cat 4.12 - Total Category 4.12

Tot Cat 4.13 - Total Category 4.13

Tot Cat 4.2 - Total Category 4.2

Tot Cat 4.22 - Total Category 4.22

Tot Cat 4.23 - Total Category 4.23

Tot Cat 4.3 - Total Category 4.3

Tot Cir Mi - Total Circuit Miles

Tot Corp Oper - Total Corporate Operations

Tot Cust Op - Total Customer Operations

Tot Cust Svc - Total Customer Services

Tot Dep Plant - Total Depreciation of Plant

Tot Dep/Amort - Total Depreciation and Amortization

Tot EU Pay and Coll - Total End User Payment and Collection Expense

Tot Ex Trunk - Total Exchange Trunk

Tot Expenses - Total Expenses

Tot IC Bill Inq - Total Interexchange Carrier Billing Inquiry

Tot IC Pay & Col - Total Interexchange Carrier Payment and Collection

Tot IC Svc Ord - Total Interexchange Carrier Service Order Processing

Tot IOT Equip - Total Information Origination/Termination Equipment

Tot IOT Exp - Total Information Origination/Termination Expense

Tot Intan Ass - Total Intangible Assets

Tot Inv - Total Investment

Tot Joint ASB - Total Joint Auxiliary Service Boards

Tot LD Msg - Total Long Distance Message

Tot Leas Imp - Total Leasehold Improvements

Tot M&S - Total Material and Supplies

Tot Misc - Total Miscellaneous Revenues

Tot Msg Proc - Total Message Processing Expenses

Tot Msgs - Total Messages

Tot Net Cur - Total Net Current Deferred Operating Income Taxes

Tot Net NonC - Total Net NonCurrent Deferred Operating Income Taxes

Tot Netwk Acc - Total Network Access

Tot Non-W Ex Tnk - Total Non-Wideband Exchange Trunk

Tot NonOp Inc - Total Nonoperating Income

Tot O Tel Pro - Total Other Telecommunications Property

Tot OB&C - Total Other Billing and Collection

Tot Oper Exp - Total Operating Expenses

Tot Oper Tax - Total Operating Taxes

Tot Oth IOT - Total Other Information Origination/Termination

Tot Oth OpInc - Total Other Operating Income

Tot Oth Plant - Total Other Plant

Tot Oth St & Lcl - Total Other State and Local Taxes

Tot Other - Total Other Depreciation and Amortization Expenses

Tot Plt NonSp - Total Plant NonSpecific

Tot Plt Spec - Total Plant Specific

Tot Pub Dir - Total Published Directories

Tot Res & Def - Total Reserves and Deferrals

Tot Res Adj - Total Reserve Adjustments

Tot Rev Reqt - Total Revenue Requirement

Tot Rev ls I Ef - Total Revenues Less Income Effects

Tot Rev ls Unc - Total Revenues Less Uncollectibles

Tot Rev/CertInc - Total Revenues and Certain Income Accounts

Tot SOB - Total Service Observing Boards

Tot Sp 4.13 - Total Special Category 4.13

Tot Sp 4.23 - Total Special Category 4.23

Tot Sp NonW - Total Special NonWideband

Tot St&Lcl Tax - Total State and Local Taxes

Tot Svc Or Proc - Total Service Order Processing

Tot TPIS - Total Telecommunications Plant In Service

Tot TSP - Total Traffic Service Positions

Tot Tang Ass - Total Tangible Assets

Tot Tel Op - Total Telephone Operator Services Expenses

Tot Tel Plant - Total Telecommunications Plant

Tot Tel Pro - Total Telecommunications Property

Tot Term - Total Terminations

Tot Toll Ctr - Total Toll Center

Tot Toll SOB - Total Toll Service Observing Boards

Tot WAC - Total Weighted Actual Contacts

Tot Wide - Total Wideband

Tot Wide Cat 2 - Total Wideband Category 2

Tot Wide Cat 4.12 - Total Wideband Category 4.12

Tot Wrk Loop - Total Working Loops

Total Traffic Sen - Total Traffic Sensitive

USF - Universal Service Fund

WATS - Wide Area Telephone Service

WSWS - Weighted Standard Work Seconds

WSWS DA - Weighted Standard Work Seconds, Directory Assistance

WSWS Intct/AIS - Weighted Standard Work Seconds, Intercept Service/ Automated Intercept Systems

WSWS Toll - Weighted Standard Work Seconds, Toll

Wideband Msg&TWX - Wideband Message and TWX

Work Loops - Working Loops

A. Introduction

This document contains the detailed automated data processing (ADP) specifications for the automated report to be filed as FCC Report 43-04, the ARMIS Access Report.

B. General Format and Media

1. All data should be submitted on 5.25-inch double-sided double-density IBM-PC compatible diskettes.

2. All files should be coded in ASCII.

3. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

4. The file name for each file has six components:

    a. the four letter COSA code (CO = Company, SA = Study Area, see attached COSA Code Table for a list of companies and their respective COSAs).
    b. the last two digits of the year which is covered by the data.
    c. the letters "AC".
    d. a decimal point.
    e. the letter "P", "C", or "U" to indicate whether this is the Public version, the Confidential version, or the only (Unrestricted) version since all data is non-confidential.
    f. two digits (zero filled) for the submission number. Submission 0 is for test data purposes only. Submission 1 is for the first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission.

    For example, the file name for the Confidential Version of the initial Access Report data file to be submitted by Illinois Bell to cover the calendar year 1988, would be LBIL88AC.C01:

LBIL	COSA for Illinois Bell
88	Data for calendar year 1988
AC	Access Report data file
.	decimal point
C	Confidential version
01	First submission of this year's data

5. A separate file should be prepared for each report. More than one file can be placed on the same diskette, as long as they cover the same period, version, and submission number.

C. Data Entry Conventions

1. Standard accounting procedures must be applied in determining the nature of any entry (e.g., each Uncollectible Revenue item, a debit entry, shall be entered as a "positive" number unless the balance therein reported is a credit). Entries of a reverse or contrary character shall be indicated by the placing of a minus sign in the column immediately preceding the numeric data, e.g., use -4, NOT - 4 or (4).

2. Begin each data record in column 1 and make each record the proper length as specified in the accompanying record layouts. Commas are used as delimiters between fields. All numeric fields are right justified and space filled, e.g. use ____123, NOT 123____. All non-numeric fields are enclosed in double quotation marks and are left justified and space filled within these quotation marks, e.g. use "John Doe ____".

3. Give each record a unique record number, beginning with 1001 and incrementing by one, with no numbers skipped.

4. Do NOT include "$" or "%" or embedded commas or decimal points in any numeric data fields except in the following instances: row number fields will include a decimal point and one decimal place but not a percent sign, and rate of return and other percentage data fields (e.g., Rate of Return Including Refund and Loop Allocation Factor fields) will include a decimal point and two decimal places but not a percent sign. (See paragraph D4 below.)

5. In any numeric data field for which data is "Not Available", enter -99999. On the "Public Version" diskette in any numeric data field for which the data is "Withheld", enter -88888. These entries should be formatted according to the format rules for the particular data field; e.g., in the Rate of Return field, -99999 would be entered as -99999.00

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

2. All amounts of minutes or seconds must be rounded to the nearest million.

3. All conversation-minute-miles and circuit miles must be rounded to the nearest million.

4. All rate of return and other percentage amounts (e.g., Rate of Return Including Refund and Loop Allocation Factor amounts) must be entered in percent and must be rounded to 2 decimal places (e.g., 12 2/3 percent should be entered as 12.67).

5. All other amounts must be rounded to the nearest thousand.

E. Data Record Descriptions

The seven data record types are described below. See pages 5 through 16 for record layouts. The file will consist of one Type H1 record, followed by one Type L1 record, followed by 722 Type K1 records, followed by one or more Type C3 records, followed by zero or more Type F3 records, followed by zero or more Type E4 records, followed by one Type T1 record.

Record Type H1	Header Record	One Type H1 record per file. The first record of each file. Contains identifying data. See page 5 for record layout.
Record Type L1	Label Record	One Type L1 record per file. The second record of each file. Contains report number, carrier name, study area name, etc. See page 6 for record layout.
Record Type K1	Separations and Access Data Record	722 Type K1 records per file. One record for each of the 722 rows shown on the Form section of the accompanying Report Definition. Each record contains data values for that particular row broken out by the cost categories, access elements, and summary columns described in the Column Descriptions section of the accompanying Report Definition. See pages 7, 8 & 9 for record layout.
Record Type C3	Confidential Treatment Record	One or more Type C3 records per file. Contains information to identify the data for which the carrier is seeking confidential treatment or to verify that the carrier is <u>not</u> seeking any confidential treatment. See pages 10 & 11 for record layout.
Record Type F3	Footnote Record	Optional. Zero or more Type F3 records per file. Contains explanatory footnote text. See pages 12 & 13 for record layout.

Record Type E4	Erratum Record	Zero Type E4 records in the first submission of a year's data. One or more Type E4 records per file in revisions filed to correct that year's submission. Contains information to identify the data which was corrected in this submission. See pages 14 & 15 for record layout.
Record Type T1	Trailer Record	One Type T1 record per file. The last record of each file. Contains contact person, etc. See page 16 for record layout.

RECORD TYPE H1 - HEADER RECORD

Field	Item	Example	Position	Description
1	Record Number	1001	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (see attached COSA Code Table) Format: include quotation marks.
3	Record Type	"H1"	13-16	Always contains the letter H capitalized and the number 1 with no space between them. Format: include quotation marks.
4	File Name	"LBIL88AC.C01"	18-31	The name of the ASCII file. Format: see page 1, paragraph B.4 above. include quotation marks.
5	Year	1988	33-36	The year covered by the data.
6	Quarter #	0	38	Always contains the number 0 since this is an annual data file.
7	Data Entry Date	19890615	40-47	The date on which the data was last entered or revised. Format: YYYYMMDD.
8	Version	"C"	49-51	The version letter (P, C or U) capitalized (for Public, Confidential or Unrestricted) Format: include quotation marks.
9	Submission #	1	53-54	0 for test data purposes only. 1 for first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission. Format: right justified and space filled.
10	End of Record Code	"XQ"	56-59	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas.
The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3         4         5          . . . . .    Ruler line
12345678901234567890123456789012345678901234567890123456789 . . . . .    Ruler line
Sample record:
1001,"LBIL","H1","LBIL88AC.C01",1988,0,19890615,"C", 1,"XQ"
```

RECORD TYPE L1 - LABEL RECORD

Field	Item	Example	Position	Description
1	Record Number	1002	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"L1"	13-16	Always contains the letter L capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Report Number	"FCC REPORT 43-04"	18-35	Always contains "FCC REPORT 43-04" capitalized. Format: include quotation marks.
5	Carrier	"Illinois Bell " (spaces until pos. 68)	37-68	Name of the carrier. Format: left justified and space filled. include quotation marks.
6	Study Area	"Illinois "	70-91	Name of the study area. Format: left justified and space filled. include quotation marks.
7	Period Covered	"Jan 1988 to Dec 1988"	93-114	Period covered by the data. Format: "mmm yyyy to mmm yyyy" include quotation marks.
8	End of Record Code	"XQ"	116-119	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

```
         1         2         3         4         5         6         7         8         9         0         1         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234
```

Sample record:

```
1002,"LBIL","L1","FCC REPORT 43-04","Illinois Bell                ","Illinois          ","Jan 1988 to Dec 1988"
```

RECORD TYPE K1 - SEPARATIONS AND ACCESS DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1065	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"K1"	13-16	Always contains the letter K capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	1000.0	18-23	Row number as identified on the accompanying Report Definition. Valid range: 10.0 to 9010.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
5	Column (b) data	70864 -OR- 12.00	25-33	This field contains the data corresponding to column (b) as shown on the Form Section of the accompanying Report Definition. Format: right justified and space filled. Enter -99999 in integer rows and -99999.00 in percentage rows to indicate that the data is not available. Enter -88888 in integer rows and -88888.00 in percentage rows on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (c) data	5432	35-43	Column (c) data Format: see Field 5 above.
7	Column (d) data	5432	45-53	Column (d) data Format: see Field 5 above.
8	Column (e) data	1358	55-63	Column (e) data Format: see Field 5 above.
9	Column (f) data	1358	65-73	Column (f) data Format: see Field 5 above.
10	Column (g) data	2716	75-83	Column (g) data Format: see Field 5 above.
11	Column (h) data	1358	85-93	Column (h) data Format: see Field 5 above.

RECORD TYPE K1 - SEPARATIONS AND ACCESS DATA RECORD (continued)

Field	Item	Example	Position	Description
12	Column (i) data	5432	95-103	Column (i) data Format: see Field 5 above.
13	Column (j) data	5432	105-113	Column (j) data Format: see Field 5 above.
14	Column (k) data	2716	115-123	Column (k) data Format: see Field 5 above.
15	Column (l) data	5432	125-133	Column (l) data Format: see Field 5 above.
16	Column (m) data	5432	135-143	Column (m) data Format: see Field 5 above.
17	Column (n) data	16296	145-153	Column (n) data Format: see Field 5 above.
18	Column (o) data	5432	155-163	Column (o) data Format: see Field 5 above.
19	Column (p) data	27160	165-173	Column (p) data Format: see Field 5 above.
20	Column (q) data	19136	175-183	Column (q) data Format: see Field 5 above.
21	Column (r) data	19136	185-193	Column (r) data Format: see Field 5 above.
22	End of Record Code	"XQ"	195-198	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

Footnote records are needed if any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition. Add one or more Type F3 records (after the remaining Type K1 and C3 records) containing footnote text to explain the specific circumstances.

RECORD TYPE K1 - SEPARATIONS AND ACCESS DATA RECORD (continued)

```
        1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234
Sample records:
1065,"LBIL","K1",1000.0,    70864,    5432,     5432,     1358,     1358,     2716,    -99999,
1214,"LBIL","K1",1427.0,   -99999,   -99999,    23.45,    -99999,   -99999,   -99999,   -99999,
```

```
    1         1         1         1         1         1         1         1         1         1
9   0         1         2         3         4         5         6         7         8         9
56789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Continuation of sample records:
    5432,     5432,    -99999,    5432,     5432,    16296,    5432,    27160,    19136,    19136,"XQ"
  -99999,   -99999,   -99999,   -99999,   -99999,   -99999,   -99999,   -99999,   -99999,   -99999,"XQ"
```

RECORD TYPE C3 - CONFIDENTIAL TREATMENT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1725	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"C3"	13-16	Always contains the letter C capitalized and the number 3 with no space between them. Format: include quotation marks.
4	Record Number (for the confidential data)	1065	18-21	This field contains the record number of the record which contains the data for which the carrier is seeking confidential treatment. If the request is for an entire column, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the confidential data appears. Format: include quotation marks. left justified and space filled.
6	Row Number	1000.0	30-35	This field contains the row number of the row which contains the confidential data as identified in the accompanying Report Definition. If the request is for an entire column, enter 9999.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
7	Column Label	"B "	37-40	This field contains the column letter of the confidential data as identified in the accompanying Report Definition. If the request is for an entire row, enter "ZZ". If the request is for more than one column but less than the entire row, then populate this field and as many as needed of fields 8 thru 22. If no confidential treatment is being requested, then enter " " in all of fields 7 thru 26. Format: include quotation marks. left justified and space filled.

RECORD TYPE C3 - CONFIDENTIAL TREATMENT RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"C "	42-45	.....
9	Third Column Label	"I "	47-50	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the request is for
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	" "	132-135	..... Otherwise, enter " ".
				Note: Fields 23 thru 26 are not used in this record in this data file.
27	End of Record Code	"XQ"	137-140	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

```
        1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456
Sample records:
1725,"LBIL","C3",1065,"I   ",1000.0,"B ","C ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1726,"LBIL","C3",1710,"I   ",8042.0,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1727,"LBIL","C3",9999,"I   ",9999.0,"Q ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
```

```
  1         1         1         1         1
9 0         1         2         3         4
7890123456789012345678901234567890123456789012345678901
Continuation of sample records:
"  ","  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","XQ"
```

RECORD TYPE F3 - FOOTNOTE TEXT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1728	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"F3"	13-16	Always contains the letter F capitalized and the number 3 with no space between them. Format: include quotation marks.
4	Record Number (for the footnoted data)	1065	18-21	This field contains the record number of the record which contains the footnoted data. If the footnote pertains to an entire column, an entire table, or the entire submission, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the footnoted data appears. If the footnote pertains to an entire table, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	1000.0	30-35	This field contains the row number of the row which contains the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to an entire column, an entire table, or the entire submission, enter 9999.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
7	Column Label	"B "	37-40	This field contains the column letter of the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to an entire row, an entire table, or the entire submission, enter "ZZ". Format: include quotation marks. left justified and space filled.

RECORD TYPE F3 - FOOTNOTE TEXT RECORD (continued)

Field	Item	Example	Position	Description
8	Footnote Number	1	42-44	The number of this particular footnote. Valid range: 1 to 999. Format: right justified and space filled.
9	Sequence Number	1	46-47	The sequence number of the record within the footnote. In other words, the order of the specific record in the sequence of records which, when combined, will provide the entire footnote. Valid range: 1 to 99. Format: right justified and space filled.
10	Footnote Text	"Footnote text (spaces until pos. 105) "	49-105	The text of the footnote or of the continuation line. Format: include quotation marks at the beginning and end of this field and left justify within these quotation marks.
11	End of Record Code	"XQ"	107-110	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

```
                                                                                                                    1         1
         1         2         3         4         5         6         7         8         9         0         1         0
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890
Sample records:
1728,"LBIL","F3",1065,"I    ",1000.0,"B ",  1, 1,"Footnote text for footnote 1                                    ","XQ"
1729,"LBIL","F3",1065,"I    ",1000.0,"B ",  1, 2,"continuation text for footnote 1                                 ","XQ"
1730,"LBIL","F3",1065,"I    ",1000.0,"B ",  1, 3,"last line of footnote 1                                         ","XQ"
1731,"LBIL","F3",1710,"I    ",8042.0,"ZZ",  2, 1,"Footnote 2 pertains to all cols. of Table I row 8042             ","XQ"
1732,"LBIL","F3",9999,"I    ",9999.0,"C ",  3, 1,"Footnote 3 pertains to all rows of Table I column C              ","XQ"
```

RECORD TYPE E4 - ERRATUM RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1733	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"E4"	13-16	Always contains the letter E capitalized and the number 4 with no space between them. Format: include quotation marks.
4	Record Number (for the corrected data)	1065	18-21	This field contains the record number of the record which contains the data which was corrected in this submission. If an entire column, an entire table, or the entire submission was corrected, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the corrected data appears. If an entire table or submission was corrected, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	1000.0	30-35	This field contains the row number of the of the row which contains the corrected data as identified in the accompanying Report Definition. If an entire column, an entire table, or the entire submission was corrected, enter 9999.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
7	Column Label	"B "	37-40	This field contains the column letter of the corrected data as identified in the accompanying Report Definition. If an entire row, an entire table, or the entire submission was corrected, enter "ZZ". If more than one column but less than the entire row was corrected, then populate this field and as many as needed of fields 8 thru 22. Format: include quotation marks. left justified and space filled.

RECORD TYPE E4 - ERRATUM RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"C "	42-45	.....
9	Third Column Label	"I "	47-50	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the correction is in
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	" "	132-135	..... Otherwise, enter " ".
				Note: Fields 23 thru 26 are not used in this record in this data file.
27	Footnote Number	1	137-139	This field contains the footnote number that explains the correction. If there is no footnote, use a zero. Format: right justified and space filled.
28	End of Record Code	"XQ"	141-144	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

```
         1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456
Sample records:
1733,"LBIL","E4",1065,"I   ",1000.0,"B ","C ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1734,"LBIL","E4",1710,"I   ",8042.0,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1735,"LBIL","E4",9999,"I   ",9999.0,"B ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1736,"LBIL","E4",9999,"I   ",9999.0,"C ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
```

```
   1         1         1         1         1
9  0         1         2         3         4
78901234567890123456789012345678901234567890123456789012345
Continuation of sample records:
*  ","  ","  ","  ","  ","  ","  ","  ","  ",  1,"XQ"
*  ","  ","  ","  ","  ","  ","  ","  ","  ",  2,"XQ"
*  ","  ","  ","  ","  ","  ","  ","  ","  ",  0,"XQ"
*  ","  ","  ","  ","  ","  ","  ","  ","  ",  3,"XQ"
```

RECORD TYPE T1 - TRAILER RECORD

Field	Item	Example	Position	Description
1	Record Number	1737	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"T1"	13-16	Always contains the letter T capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Contact Person	"John Doe " (spaces until pos. 59)	18-59	The name of the person to contact if there are questions about the report. Format: include quotation marks.
5	Telephone #	"(202) 555-1212 x123 "	61-82	The Contact Person's telephone number. Format: include quotation marks.
6	End of Record Code	"XQ"	84-87	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: Separate all fields with commas

Sample record:

```
        1         2         3         4         5         6         7         8
12345678901234567890123456789012345678901234567890123456789012345678901234567

1737,"LBIL","T1","John Doe                                    ","(202) 555-1212 x123 ","XQ"
```

A. Introduction

This document contains the page layout and detailed specifications for the paper report to be filed as FCC Report 43-04, the ARMIS Access Report.

B. General Instructions

1. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

2. The Ruler Lines included on the page layouts with the column titles are included only to assist the reader. Do not include ruler lines as lines in the report.

3. The paper report must be printed on 8 1/2 inch by 11 inch paper. For ease of preparation, an original may be produced on larger paper and reduced to this size for submission. Copies filed must be legible and permanent, in black ink. The report may be printed in portrait mode (8 1/2 inches across the top of the page) or landscape mode (11 inches across the top of the page). In portrait mode, the printing should not be smaller than 17 characters per inch and 8 lines per inch; in landscape mode, the printing should not be smaller than 15 characters per inch and 10 lines per inch.

C. Data Entry Conventions

1. Standard accounting procedures must be applied in determining the nature of any entry (e.g., each Uncollectible Revenue item, a debit entry, shall be entered as a "positive" number unless the balance therein reported is a credit). Entries of a reverse or contrary character shall be indicated by the placing of a minus sign in the column immediately preceding the numeric data, e.g., use -4, NOT - 4 or (4).

2. In any numeric data field for which the data is "Not Available", enter N/A. On the "Public Version" report in any numeric data field for which the data is "Withheld", enter W/H.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

2. All amounts of minutes or seconds must be rounded to the nearest million.

3. All conversation-minute-miles and circuit miles must be rounded to the nearest million.

4. All rate of return and other percentage amounts (e.g., Rate of Return Including Refund and Loop Allocation Factor amounts) must be entered in percent and must be rounded to 2 decimal places (e.g., 12 2/3 percent should be entered as 12.67).

5. All other amounts must be rounded to the nearest thousand.

E. Page Layouts

The ninety page layouts for Table I are illustrated in the Form section of the accompanying Report Definition. In addition, the following note must appear at the bottom of each page of Table I, where applicable:

THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE. SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

The four page layouts for the Confidential Treatment Table, the Footnote Table, the Erratum Table, and the Certification Page are illustrated on pages 4 through 7 of this document.

The paper report will consist of the following pages, in order:

	Illustrated in Report Def. - Form on Page
Table I Pages 1.1 through 1.3	1 - 3
Table I Pages 2.1 through 2.3	4 - 6
Table I Pages 3.1 through 3.3	7 - 9
. .	
. .	
. .	
Table I Pages 30.1 through 30.3	88 - 90

	Illustrated in Paper Report Specs. on Page
The Confidential Treatment Table (at least one page and as many pages as needed)	4
The Footnote Table (at least one page and as many pages as needed)	5
The Erratum Table (for submission number 2 or higher, as many pages as needed)	6
The Certification Page	7

FCC REPORT 43-04
ARMIS ACCESS REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy CONF. TREATMENT TABLE
COSA: xxxx PAGE 1 OF x

CONFIDENTIAL TREATMENT TABLE

Table	Row	Column(s)	
(a)	(b)	(c)	
xxxx	1234.1	x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x	... Ruler Li

sample entries:

I	1000	B, C
I	8042	ALL
I	ALL	Q

THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR THE ABOVE DATA IN THIS REPORT.

-OR-

THE COMPANY HAS NOT REQUESTED CONFIDENTIAL TREATMENT FOR ANY DATA IN THIS REPORT.

FCC REPORT 43-04
ARMIS ACCESS REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
FOOTNOTE TABLE
PAGE 1 OF x

FOOTNOTE TABLE

Table	Row	Col	FN#	Footnote
(a)	(b)	(c)	(d)	(e)
xxxx	1234.1	xxx	123	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx ... Ruler Line

sample entries:

I	1000	B	1	Footnote text for footnote 1 continuation text for footnote 1 last line of footnote 1
I	8042	ALL	2	Footnote 2 pertains to all cols. of Table I row 8042
I	ALL	C	3	Footnote 3 pertains to all rows of Table I column C

-OR-

THERE ARE NO FOOTNOTES FOR THIS SUBMISSION.

FCC REPORT 43-04
ARMIS ACCESS REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxxx VERSION
SUBMISSION x
ERRATUM TABLE
PAGE 1 OF x

ERRATUM TABLE

Table Row		Column(s)	FN#	
(a)	(b)	(c)	(d)	
xxxx	1234.1	x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x	123	... Ruler Line

sample entries:

I	1000	B, C	1
I	8042	ALL	2
I	ALL	B	
I	ALL	C	3

THE ABOVE DATA HAS BEEN CORRECTED IN THIS SUBMISSION.
SEE THE FOOTNOTE TABLE FOR FOOTNOTES WHERE APPLICABLE.

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

DIVESTED BOC INDEX

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
Ameritech					AMTR
		1. Illinois Bell		- Illinois	LBIL
		2. Indiana Bell		- Indiana	NBIN
		3. Michigan Bell		- Michigan	MBMI
		4. Ohio Bell		- Ohio	OBOH
		5. Wisconsin Bell		- Wisconsin	WTWI
Bell Atlantic					BATR
	1.	the Chesapeake and Potomac telephone companies			CPTC
		1. C&P (D.C.)		- Dist. of Columbia	CDDC
		2. C&P of Maryland		- Maryland	CMMD
		3. C&P of Virginia		- Virginia	CVVA
		4. C&P of West Virginia		- West Virginia	CWWV
	2.	Bell of PA and Diamond State			PDTC
		1. Diamond State Telephone		- Delaware	DSDE
		2. Bell of Pennsylvania		- Pennsylvania	PAPA
	3.	New Jersey Bell			
		1. New Jersey Bell		- New Jersey	NJNJ
Bell South					BSTR
		1. Southern Bell			SBTC
				- Florida	SBFL
				- Georgia	SBGA
				- North Carolina	SBNC
				- South Carolina	SBSC
		2. South Central Bell			SCTC
				- Alabama	SCAL
				- Kentucky	SCKY
				- Louisiana	SCLA
				- Mississippi	SCMS
				- Tennessee	SCTN
NYNEX					NXTR
		1. New England Telephone			NETC
				- Maine	NEME
				- Massachusetts	NEMA
				- New Hampshire	NENH
				- Rhode Island	NERI
				- Vermont	NEVT
		2. New York Telephone		- New York	NYNY
Pacific Telesis					PTTR
		1. Pacific Bell		- California	PTCA
		2. Nevada Bell		- Nevada	PTNV

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
Southwestern Bell Telephone Company					SWTR
				- Arkansas	SWAR
				- Kansas	SWKS
				- Missouri	SWMO
				- Oklahoma	SWOK
				- Texas	SWTX
			all except Kansas		SWAG
U.S. West					USTR
		1. Mountain Bell			MSTC
				- Arizona	MSAZ
				- Colorado	MSCO
				- Idaho	MSID
				- Montana	MSMT
				- New Mexico	MSNM
				- Utah	MSUT
				- Wyoming	MSWY
		2. Northwestern Bell			NWTC
				- Iowa	NWIA
				- Minnesota	NWMN
				- Nebraska	NWNE
				- North Dakota	NWND
				- South Dakota	NWSD
		3. Pacific Northwest Bell			PNTC
				- Idaho	PNID
				- Oregon	PNOR
				- Washington	PNWA
Total Divested Bell Operating Companies					TBOC

INDEPENDENT COMPANY INDEX

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
Alascom, Inc.				- Alaska	AKAK
Central Telephone Company					CETC
		1. of Florida		- Florida	CEFL
		2. of Illinois		- Illinois	CEIL
		3. of Nevada		- Nevada	CENV
		4. of Virginia		- Virginia	CEVA
Cincinnati Bell Telephone	- Ohio & Kentucky				CBTC
Continental Telephone Company					COTC
		1. Contel of California		- California	COCA
		2. Contel of Illinois		- Illinois	COIL
		3. Contel of Missouri		- Missouri	COMO
		4. Contel of New York		- New York	CONY
		5. Contel of Texas		- Texas	COTX
		6. Contel of Virginia		- Virginia	COVA
GTE Telephone Operating Companies					GTTC
		1. GTE California Inc.		- California	GTCA
		2. GTE Florida Inc.		- Florida	GTFL
		3. GTE Northwest Inc.			GTNW
			- Idaho & Montana		GTNA
				- Idaho	GTID
				- Montana	GTMT
			- OR, WA & Wstn CA		GTNB
				- Oregon	GTOR
				- Washington	GTWA
				- West Coast CA	GNCA
		4. GTE South Inc.			GTSO
				- Alabama	GTAL
				- Georgia	GTGA
				- Kentucky	GTKY
				- North Carolina	GTNC
				- South Carolina	GTSC
				- Tennessee	GTTN
				- Virginia	GTVA
				- West Virginia	GTWV

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
		5. GTE Southwest Inc.			GTSW
				- Arkansas	GTAR
				- New Mexico	GTNM
				- Oklahoma	GTOK
				- Texas	GTTX
		6. GTE North Inc.			GTMW
				- Illinois	GTIL
				- Indiana	GTIN
				- Iowa	GTIA
				- Michigan	GTMI
				- Minnesota	GTMN
				- Missouri	GTMO
				- Nebraska (also serving Kansas)	GTNE
				- Ohio	GTOH
				- Pennsylvania	GTPA
				- Wisconsin	GTWI
		7. GTE Hawaiian Tel. Co. Inc.		- Hawaii	GTHI
Lincoln Telephone Company				- Nebraska	LTNE
Puerto Rico Telephone Company				- Puerto Rico	PRPR
Rochester Telephone Corporation				- New York	RTNY
Southern New England Telephone				- Connecticut	SNCT
United Telephone System					UTTC
		1. United Tel. Co. of Florida		- Florida	UTFL
		2. United Tel. Co. of Indiana		- Indiana	UTIN
		3. United Tel. Co. of Missouri		- Missouri	UTMO
		4. Carolina Tel. and Tel. Co.		- North Carolina	UTNC
		5. United Tel. Co. of Ohio		- Ohio	UTOH
		6. United Tel. Co. of Penn.		- Pennsylvania	UTPA
		7. United Inter-Mountain Tel. Co.		- Tennessee	UTIM
				- Virginia	UTTN
					UTVA
Total Independent Companies					TICO
AT&T Communications					ATTC
Total Industry					TOTL

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